United States
COURT OF APPEALS
for the Ninth Circuit

GLADYS LAYCOCK,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

BRIEF OF APPELLANT

Appeal from the United States District Court for the District of Oregon.

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BRIEF OF APPELLANT

Appeal from the United States District Court for the District of Oregon.

STATEMENT OF THE PLEADINGS AND FACTS

This is an action for damages for the taking of plaintiff's property without just compensation in violation of the due process clause of the Fifth Amendment to the Constitution of the United States of America. Jurisdiction of the District Court was invoked under the Tucker Act, section 1346 (a) (2) of Title 28 of the United States Code, 1948 Edition, as referred to in plaintiff's complaint (Transcript of Record 3; hereinafter abbreviated as (Tr.). Jurisdiction of the Court of Appeals is based upon Title 28, section 1291, U.S.C.A.

Plaintiff is part owner of a gold mine which is lying dormant because of the governmentally enforced price of 35 depreciated paper dollars per fine ounce for her product. With the vastly increased cost of labor, machinery and materials of the present day, she cannot operate her mine profitably at $35.00. It is her theory that the United States can take her gold under its power of eminent domain if it so desires, but in doing so, it is obliged to pay her a fair market price therefor. $35.00 is not a fair market price and therefore she is being deprived of her property without due process of law.

In Paragraph I of her complaint she bases jurisdiction upon the Tucker Act, which makes provision for the District Courts of the United States to act as limited courts of claims to the extent of $10,000 (Tr. 3).

In Paragraph II she sets forth the interest that she owns in patented gold mining properties in Grant County, Oregon.

In Paragraph III she sets forth the derivation of her title dating back to a recorded Patent signed by President Roosevelt on February 23, 1906, guaranteeing the right to hold said mining premises, "together with all of the rights, privileges, immunities and appurtenances of whatsoever nature thereunto belonging unto the said grantee above named and to its successors and assigns forever".

In Paragraph IV she alleges the development work which has been done and that there has been no activity because the property cannot be economically worked

when compensation is made in terms of a set amount of depreciated paper currency.

In Paragraph V she pleads the Trading with the Enemy Act of 1917, (40 Stat. 415) as amended in 1933, (48 Stat. 1) and in Paragraph VI the Federal Reserve Act of 1934. (48 Stat. 337).

In Paragraph VII she alleges the consequences of those Acts, namely:

(1) Prohibiting the holding of gold;

(2) Denying the right to sell to anyone other than the United States Government and its agents who possess licenses;

(3) Imposing license requirements on producers and fixing an arbitrary and mandatory price for the product.

In Paragraph VIII she alleges that the inconvertible paper currency that she is forced to take for her product has depreciated to the extent that she has been prevented from making lawful use of her property.

In Paragraph IX she sets out her Constitutional grievances with the Gold Reserve Act of 1934, namely:

(1) The powers sought to be exercised by Congress and the Executive exceeded those delegated to them by the Constitution;

(2) Commodity gold is not a proper subject matter for licensing and regulation by the Government;

(3) Congress' power to coin money and regulate its value does not give it power to set up a monopoly at an arbitrary price with respect to gold; and

(4) Allowing the Executive branch to regulate was in itself an unconstitutional delegation of legislative powers.

Paragraph X alleges her Constitutional grievances with the Trading with the Enemy Act on the grounds that:

(1) Powers of Congress were exceeded;

(2) Commodity gold is not a proper subject matter for licensing and regulation by the Government;

(3) The Executive was not given authority under the Act to regulate domestically produced gold not held for the account of enemies of the United States;

(4) The regulations exceeded the authority granted;

(5) There was an unconstitutional delegation of legislative powers to the Executive and

(6) At the present time the emergency giving rise to the law and the orders has ceased to exist and, therefore, the law has no further force and effect.

In Paragraph XI of her complaint she alleges that she has been deprived of property without due process of law and without just compensation in violation of the Fifth Amendment to the Constitution; further, that she has been deprived of her Constitutional right to own and make use of private property.

In Paragraph XII she alleges damages to the extent of $10,000.00 in order to stay within the Tucker Act and she has alleged that damage has occurred during the past two years, thereby coming well within the statute of limitations and waiving all damages prior thereto. The damages alleged consist of loss of profits and depreciation in value of her property.

In the prayer she asks for judgment in the sum of $10,000.00 (Tr. 10).

The provisions of the Trading with the Enemy Act pertinent to the instant appeal are as follows:

> "(1) During the time of war or during any other period of national emergency declared by the President, the President may, through any agency that he may designate, or otherwise, and under such rules and regulations as he may prescribe, by means of instructions, licenses, or otherwise—
>
> > (A) investigate, regulate, or prohibit any transactions in foreign exchange, transfers of credit or payments between, by, through, or to any banking institution, and the importing, exporting, hoarding, melting, or earmarking of gold or silver coin or bullion, currency or securities." (48 Stat. 1)

Executive Order No. 6260 was issued pursuant to claimed authority under the foregoing quoted provisions of the Trading with the Enemy Act. Section 4 of the Order provides in part as follows:

> "Acquisition of Gold Coin and Gold Bullion.—No person other than a Federal Reserve bank shall after the date of this order acquire in the United States any gold coin, *gold bullion,* or gold certificates except under license therefor issued pursuant to this Executive order * * * Licenses issued pursuant to this section shall authorize the holder to acquire gold coin and gold bullion only from the sources specified by the Secretary of the Treasury in regulations issued hereunder."

Section 5 of Order 6260 provides in part as follows:

> "Holding of gold coin, gold bullion, and gold certificates.—After 30 days from the date of this order no person shall hold in his possession or retain any interest, legal or equitable, in any gold

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Note: All italics herein supplied unless otherwise indicated.

coin, *gold bullion*, or gold certificates situated in the United States and owned by any person subject to the jurisdiction of the United States, except under license therefor issued pursuant to this Executive order."

Section 6 of Order 6260 provides in part as follows:

"Earmarking and export of gold coins and gold bullion.—After the date of this order no person shall earmark or export any gold coin, gold bullion, or gold certificates from the United States, except under license therefor issued by the Secretary of the Treasury pursuant to the provisions of this order."

Section 9 of Order 6260 provides in part as follows:

"The Secretary of the Treasury is hereby authorized and empowered to issue such regulations as he may deem necessary to carry out the purposes of this order."

Section 10 of Order 6260 provides that:

"Whoever willfully violates any provision of this Executive order or of any license, order, rule, or regulation issued or prescribed hereunder, shall, upon conviction, be fined not more than $10,000, or, if a natural person, may be imprisoned for not more than 10 years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both." (Title 12 U.S.C.A. sec. 95a, 48 Stat. 1)

The pertinent provision of the Gold Reserve Act of 1934 reads as follows:

"The Secretary of the Treasury shall, by regulations issued hereunder, with the approval of the President, prescribe the conditions under which gold may be acquired and held, transported, melted or treated, imported, exported, or earmarked: (a)

for industrial, professional and artistic use; (b) by the Federal Reserve banks for the purpose of settling international balances; and (c) for such other purposes as in his judgment are not inconsistent with the purposes of sections 315b, 405b, 408a, 408b, 440-446, 752, 754a, 754b, 767, 821, 822a, 822b, and 824 of this title and sections 213, 411-415, 417 and 467 of Title 12. Gold in any form may be acquired, transported, melted or treated, imported, exported, or earmarked or held in custody for foreign or demestic account (except on behalf of the United States) only to the extent permitted by, and subject to the conditions prescribed in, or pursuant to, such regulations. Such regulations may exempt from the provisions of this section, in whole or in part, gold situated in places beyond the limits of the continental United States." (48 Stat. 340)

The current gold regulations are attached hereto marked "Appendix A".

Section 54.44 of the regulations provides that:

"The mints shall pay for all gold purchased by them in accordance with this subpart $35.00 (less one-fourth of 1 percent) per troy ounce of fine gold, but shall retain from such purchase price an amount equal to all mint charges. This price may be changed by the Secretary of the Treasury without notice other than by notice of such change mailed or telegraphed to the mints." (Appendix A, p. 15)

Section 54.12 provides that:

"Gold in any form may be acquired, held, transported, melted or treated, imported, exported, or earmarked only to the extent permitted by and subject to the conditions prescribed in the regulations in this part or licenses issued thereunder." (Appendix A, p. 7)

Section 54.11 provides as follows:

"Civil and criminal penalties—

"(a) Civil penalties. Attention is directed to section 4 of the Gold Reserve Act of 1934, which provides:

Any gold withheld, acquired, transported, melted or treated, imported, exported, or earmarked or held in custody, in violation of this Act or of any regulations issued hereunder, or licenses issued pursuant thereto, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law; and in addition any person failing to comply with the provisions of this Act or of any such regulations or licenses, shall be subject to a penalty equal to twice the value of the gold in respect of which such failure occurred (31 U.S.C. 433).

(b) Criminal punishment. Attention is also directed to (1) section 5 (b) of the act of October 6, 1917, as amended, which provides in part:

Whoever wilfully violates any of the provisions of this subdivision or of any license, order, rule or regulation issued thereunder, shall, upon conviction, be fined not more than $10,000 or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both. As used in this subdivision the term 'person' means an individual, partnership, association, or corporation (12 U.S.C. 95a (3))." Appendix A, p. 6)

STATEMENT OF THE CASE

This is an action brought by a gold mine owner under the Tucker Act to recover damages from the Government for property taken without due process of law. Her theory is that the arbitrary and mandatory price of $35.00 set by the gold regulations under penalty of fine and/or imprisonment is outright confiscation of valuable property rights belonging to plaintiff. There is no constitutional authority for sustaining the gold laws which have practically destroyed a legitimate industry.

Defendant moved to dismiss plaintiff's complaint upon the following grounds:

I.

> "Plaintiff's complaint states that the taking of her property and the acts constituting the alleged wrong committed by the defendant, occurred more than six years prior to the filing of this action, and this action is therefore barred by the statute of limitations.

II.

> Plaintiff's complaint fails to state a claim or cause of action upon which relief can be granted.

III.

> Plaintiff's complaint fails to allege facts sufficient to establish jurisdiction of this Court over defendant, United States of America." (Tr. 10-11)

The District Court dismissed plaintiff's complaint, whereupon this appeal was timely perfected.

SPECIFICATION OF ERROR NO. 1

The District Court erred in dismissing plaintiff's complaint.

Summary of Argument

1. The District Court had jurisdiction of this cause and the Court of Appeals has jurisdiction of this appeal.

Title 28, Section 1346, U.S.C.A.
Title 28, Section 1291, U.S.C.A.
Jacobs v. U. S., 290 U.S. 13, 54 S. Ct. 26, 78 L. Ed. 142 (1933).
U. S. v. Great Falls Mfg. Co., 112 U.S. 645, 5 S. Ct. 306, 28 L. Ed. 846 (1884).

2. Plaintiff's claim is not barred by the statute of limitations.

Title 28, Section 2401, U.S.C.A.
Oro Fino Consolidated Mines v. U. S., 118 Ct. Cl. 18 (1950).

3. Where private property is taken by the United States in the exercise of its power of eminent domain, but without condemnation proceedings, the owner may, under the Tucker Act, bring suit for just compensation in a District Court sitting as a Court of Claims.

Title 28, Section 1346, U.S.C.A.
Jacobs v. U. S., 290 U.S. 13, 54 S. Ct. 26, 78 L. Ed. 142 (1933).
U. S. v. Great Falls Mfg. Co., 112 U.S. 645, 5 S. Ct. 306, 28 L. Ed. 846 (1884).

4. When the government forbids an owner of property to make any other use of it, and requires him to

sell it to the government it is taking of private property for public use.

Edward P. Stahel & Co. v. U. S., 111 Ct. Cl. 682, 78 F. Supp. 800, Cert. den. 336 U.S. 951 (1948).

5. Price fixing and monopoly of gold by the United States is unconstitutional in that it is a taking of private property without due process of law. The Treasury Department can pay $35 per oz. for gold if it so desires, but it has no authority to make that price mandatory to the property owner by and through its gold regulations.

Fifth Amendment to the Constitution of the United States.

6. The depreciation of the property of the owner rather than an accretion of a right or interest to the sovereign constitutes the taking, therefore, the fact that the Government doesn't get the gold laying in the ground of plaintiff's property is immaterial.

U. S. v. General Motors Corporation, 323 U.S. 373, 378, 65 S. Ct. 357, 89 L. Ed. 311 (1945).

7. Plaintiff's property "within the meaning of the Fifth Amendment" is not limited to the physical thing; that is, the mine. Plaintiff's right, as owner, to produce gold from her mine at a profit is in intself "property" protected by the Constitution.

Fifth Amendment to the Constitution of the United States.

Pennsylvania Coal Co. v. Mahon, 260 U.S. 393, 414, 43 S. Ct. 158, 67 L. Ed. 322 (1922).

Homestake Mining Co. v. U. S., Ct. Cl. Case No. 50, 195, p. 121 (1954).

8. The power given to Congress "to coin money and regulate the value thereof" does not give either the Executive or the Legislative branch of the Government authority to confiscate personal property at a price set by the Executive branch of the Government.

Article I, Section 8, Constitution of the United States.
Articles I, II, and III, Sections 1, Constitution of the United States.
Fifth Amendment to the Counstitution of the United States.

9. When a taking of private property has been ordered under the power of eminent domain, the question of just compensation is *judicial* and neither Congress nor the Executive has the power to fix a mandatory price on gold of the property owner.

Article III, Section 1, Constitution of the United States.
Monongahela Nav. Co. v. U. S., 148 U.S. 312, 13 S. Ct. 622, 37 L. Ed. 463 (1893).

10. All legislative powers are vested in the Congress of the United States and the Executive Department has no Constitutional authority to legislate; therefore, price fixing and monopoly of gold by executive order is unconstitutional in that it is attempted legislation by the executive.

Articles I and II, Sections 1, Constitution of the United States.
Youngstown Sheet and Tube Co. v. Sawyer, 343 U.S. 579, 72 S. Ct. 863, 96 L. Ed. 1153 (1952).
Little v. Barreme, 2 L. Ed. 243, 2 Cranch 170 (1804).

11. The liberty of a lawful industry to survive in the

United States and to compete for a price from the various users of its product is protected by the Constitution and when the industry is discriminated against and strangled into extinction by a fixed mandatory 1934 price together with the consequences of subsequent inflation, it constitutes "seizure" and the destruction of liberty in violation of the Constitution.

Fifth Amendment to the Constitution of the United States.
Youngstown Sheet and Tube Co. v. Sawyer, 343 U.S. 579, 72 S. Ct. 863, 96 L. Ed. 1153 (1952).
Bolling v. Sharpe, 347 U.S. 497, 74 S. Ct. 693, 98 L. Ed. 884 (1954).

12. Gold is not a deleterious substance like opium and is not subject to regulation under the police power.

Constitution of the United States.
Austin v. Tennessee, 179 U.S. 343, 21 S. Ct. 132, 45 L. Ed. 224 (1900).

13. The "Trading with the Enemy Act" was only applicable to property which may get into the hands of the enemy during time of war. It was not intended to apply to property belonging to United States Citizens with no enemy involved.

Title 12, Section 95A, U.S.C.A.
Propper v. Clark, 337 U.S. 472, 69 S. Ct. 1333, 93 L. Ed. 1480 (1949).

14. Executive Order 6260, issued pursuant to claimed authority under the "Trading with the Enemy Act", only applied to gold in existence when the order went into effect. It was not intended to apply to gold subsequently mined.

Title 12, Section 95A, U.S.C.A.

15. Allowing plaintiff to go to the market place and get the best price she can for her gold will not affect the par value of $35 set under the International Monetary Fund.

Bretton Woods Agreement Act, 59 Stat. 512.

Argument

JURISDICTION

It is generally believed that the United States Goverfnment cannot be sued on the broad principle that the sovereign may not be sued without its consent. However, in the First Amendment to the Constitution, (which is the first article of our Bill of Rights), it is provided that the people shall have the right "to petition the Government for redress of grievances." In the first fifty years of the Government's existence this right of petition resulted in so many claims being presented to Congress for all kinds of grievances that the wheels of legislation were clogged. After years of discussion in Congress it was decided in 1855 to set up a tribunal of 3 judges to hear these claims and make reports to Congress. It was soon found, however, that the limited powers of this first court of claims did not remedy the trouble and the Court's recommendations to Congress soon piled up as badly as claims had done previously. Finally during the Civil War (1863) at President Lincoln's suggestion, the powers and jurisdiction of the Court were enlarged so that it might render decisions upon claims. Further, the Court was increased from 3 to 5 judges. Provision for the general jurisdiction for the Court of

Claims is found under Title 28, Section 1491, U.S.C.A., and we will set the provisions out for the reason that they are identical with those of the Tucker Act. Section 1491 provides:

> "The Court of Claims shall have jurisdiction to render judgment upon any claim against the United States:
>
> (1) Founded upon the Constitution; or
>
> (2) Founded upon any Act of Congress; or
>
> (3) Founded upon any regulation of an executive department; or
>
> (4) Founded upon any express or implied contract with the United States; or
>
> (5) For liquidated or unliquidated damages in cases not sounding in tort."

Historically we know that from the 1860's on, there was great migration of people westward and the impetus had been stepped up because of the discovery of gold in California. Indeed, history shows that the gold fields in California were responsible to a large extent in winning the civil war for the North. Therefore, in exercising Constitutional rights to petition the Government for redress of grievances, it became more and more difficult for segments of our population to take advantage of the Court of Claims in Washington. This was so because of difficult travel conditions over great distances. Therefore, in 1887 Congress, by and through the Tucker Act, made all United States District Courts limited Courts of Claims, thereby allowing a large portion of the claims to be settled locally. Citizens could petition their Government for redress of grievances up to $10,000.00 without going to Washington. The Act upon which juris-

diction for the case at bar is based, is found in Title 28, Section 1346, U.S.C.A. It provides as follows:

> "The District Courts shall have original jurisdiction, *concurrent with the Court of Claims,* of:
>
> (2) Any other civil action or claim against the United States, not exceeding $10,000 in amount, *founded either upon the Constitution,* or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort."

Mrs. Laycock chose not to go to Washington to seek full redress for her grievances, but rather to waive all damages over $10,000.00 and have her case decided by the District Court of the United States sitting as a local Court of Claims.

Claims "founded upon the Constitution" are generally claims for recovery of just compensation under the Fifth Amendment. When private property is taken, as is the contention in the case at bar, a claim under this heading is appropriate. (*Jacobs v. U. S.,* 290 U.S. 13 (1933); *U. S. v. Great Falls Mfg. Co.,* 112 U.S. 645 (1884)). In *Stovall v. U. S.,* 26 Ct. Cl. 226, 240 (1891), the court in discussing the jurisdiction conferred by the phrase "claims upon the Constitution" stated that it "is as comprehensive and untrammelled a grant of jurisdictional authority as the legislative power could well make * * * that whenever a citizen is entitled to compensation by virtue of the express terms of the Constitution, he may recover it by a suit against the Government". In the case at bar, the Fifth Amendment is directly involved. Plaintiff is being deprived of lawful use

of her property without due process of law and without just compensation. Further, gold is invariably found with silver at a ratio of approximately 9 to 1. Silver is not regulated but, nevertheless, plaintiff is effectively and unconstitutionally deprived of the silver contained in her gold as a result of the gold regulations.

With respect to the second and third jurisdictional provisions of the Tucker Act, namely, Acts of Congress and regulations of executive departments, it is plaintiff's theory that the litigation challenges the acts and regulations involved as being contrary to established law and hence invalid. Therefore, she is entitled to recover in this action.

It is her theory with respect to the last jurisdictional provision that the laws and regulations constitute a taking of her property by the Government and, therefore, she is entitled to compensation under the Fifth Amendment by implied contract. See *United States v. North American Transportation & Trading Company,* 253 U.S. 330, 333 (1920), wherein it was stated that:

> "When the government, without instituting condemnation proceedings, appropriates for a public use, under legislative authority, private property to which it asserts no title, *it impliedly promises to pay therefor.*"

Also see *United States v. Great Falls Mfg. Co.,* 112 U.S. 645 (1884); and *United States v. Lynah,* 188 U.S. 445 (1903), as direct authority for jurisdiction in the case at bar.

From what has been already said, it is apparent that Section 773 (b) of Title 31 U.S.C. cited by the Govern-

ment in its Memorandum, which withdraws consent to sue the United States in certain instances, is not applicable for the reason that the Constitution is controlling and specifically gives the right to petition Government for redress of grievances. Among the grievances redressable is the taking of private property for public use—compensation for which is guaranteed by the 5th Amendment. The enabling legislation for carrying these constitutional provisions into effect is the Tucker Act. Further, wholly apart from the Tucker Act, the Constitutional provision that private property cannot be taken without just compensation, carries with it a waiver on the part of the government of its immunity to suit except by its consent.

LIMITATIONS

Surely the Government cannot be serious in presenting this ground for dismissal. Its success would mean that all unconstitutional acts of the legislative or executive branches of Government could not be challenged by parties aggrieved thereby after the six year limitation period had passed. No authority has been cited, and, indeed, there is none to cite for this proposition. The plaintiff is continuously being deprived of the use of her property by unconstitutional laws and regulations placed in effect by her Government. She has elected to waive all of her claims antedating 2 years last past. The wrongs of the Government are continuous and being continuous she has the Constitutional right to challenge a portion thereof and waive the balance. The same contention now being made by the Government was made

and rejected in *Oro Fino Consolidated Mines v. U. S.*, 118 Ct. Cl. 18 (1950). It was a case arising out of the L-208 gold mine closing order during the second world war. The Government argued that according to the petition the alleged taking occurred not later than January 18, 1943, and the plaintiff's claim first accrued on that date, which was more than six years before the petition was filed. The defendant further contended that even if the taking be regarded as a series of successive takings ending with revocation of L-208 in June, 1945, rather than a single act, the statute would still bar recovery of any damages accruing before February, 1944. This ground of the demurrer was specifically overruled, the court holding that the statute did not commence to run until the consequences of the taking "having so manifested themselves that a final account may be struck." The damage to the plaintiff in the case at bar is continuous in nature every hour of every day and, therefore, no final account may yet be struck. Therefore, this action is brought well within the time provided under Title 28, Section 2401, U.S.C.A.

CONSTITUTIONALITY

Preliminary Statement

Plaintiff is 65% owner of a gold mine in Grant County, Oregon. In years past considerable developmental work had been done to the point where approximately 243,000 yards of gold bearing ore is presently "blocked out"; that is, exposed underground on three sides. Hers is a "lode" mine which means that the gold

is deposited in auriferous quartz veins in hard rock. A lode mine is distinguished from a "placer" mine in that the latter has its gold in streamborne materials. To recover the gold from plaintiff's mine, it is necessary to process the ore by smelting and otherwise treating it by various processes.

The Treasury Department's gold regulations promulgated July 14, 1954, requires that an owner be licensed to "melt or treat", "acquire", "hold", "transport", or "earmark" gold. They further provide that the gold must then be sold to the United States or its duly authorized agent at a fixed price of $35 per fine ounce. For penalties to the owners for failure to comply with the gold regulations—the following consequences are ennumerated therein: (1) "Any gold * * * shall be forfeited to the United States"; (2) "any person * * * shall be subject to a penalty equal to twice the value of the gold"; and (3) "whoever wilfully violates any of the provisions of this subdivision or of any license, order, rule, or regulation issued thereunder, shall upon conviction, be fined not more than $10,000 or * * * may be imprisoned for not more than ten years, or both."

It is plaintiff's contention in this suit that the foregoing regulations deprive her of property without due process of law in violation of the Federal Constitution. She is suffering a daily loss for the reason that the depreciated currency manifested in high wages and other costs make her mine unprofitable to operate. As a further result, the resale value thereof is all but destroyed. The Court can take judicial knowledge of the decline of

the purchasing power of the paper dollar. The United States Government has directly admitted the consequences of this fact of economic life which has had the effect of closing down over 90% of the operating gold mines in the United States. In the Report of the Director of the Mint for 1952, at page 27 is the following report from New Mexico.

> *"The high cost of labor and material compared with the fixed price of gold since World War II has almost eliminated straight gold and gold-silver mining as a material factor in the metal mining industry of New Mexico."*

and, on page 23 is the discouraging report from Colorado:

> *"The rise in wages and cost of materials, with no change in the domestic price of gold accentuated the depression in straight gold mining."*

It is apparent the depression is universal when we glance at the report from California found on page 22:

> *"Adversely affected by the unchanged price of gold and the inflationary trend of the national economy, California gold yield in 1951 fell 18% below the 1950 output."*

Alaska is most severly hit for the reason that for many years gold has been the main production commodity supporting its economy. Following is the report found at page 20:

> A 17% decrease in production marked a return to the general trend downward which has characterized the industry since the initial postwar upsurge that culminated in 1947 * * * higher than ever costs of supplies and equipment, scarcity of equipment and difficulty of obtaining replacement parts and

> prohibitive competitive wage rates offered by contractors connected with defense projects in areas adjacent to mines, *coupled with an unchanged established U. S. Treasury price of $35 per fine ounce,* posed an almost unsurmountable barrier to continued operation of many of the mines."

Plaintiff's is a so-called marginal mine for the reason that it would cost her 35 of the presently depreciated paper dollars to mine and process her gold ore. On the other hand, if she were allowed a fair price in terms of today's depreciated currency, she would be a wealthy woman. As a result, she sincerely contends that she is being deprived of her property without due process of law in violation of the Constitution every day of the year.

Gold Laws are Unconstitutional

The basic law being dealt with in the case at bar is the Fifth Amendment to the Constitution of the United States and is worded as follows:

> *"No person shall * * * be deprived of life, liberty or property without due process of law; nor shall private property be taken for public use, without just compensation."*

It is plaintiff's primary theory that her property is in effect being taken under the power of eminent domain. The general rule is that:

> "Where property is taken by the United States in the exercise of the power of eminent domain, but without condemnation proceedings, the owner may, under the Tucker Act, bring suit for just compensation in the Court of Claims or in a District Court sitting as a Court of Claims."

Jacobs v. United States, 290 U.S. 13, 54 S. Ct. 26, 78 L. Ed. 142 (1933).

United States v. Great Falls Mfg. Co., 112 U.S. 645, 5 S. Ct. 306, 28 L. Ed. 846 (1884).

As a secondary quarrel with the activities of the Government with respect to gold, it is her contention that the executive department has no constitutional power to fix a price for her product. The general rule is that when a taking of private property has been ordered, *the question of just compensation is judicial.* (*Monongahela Navigation Co. v. United States,* 148 U.S. 312, 327, 13 S. Ct. 622, 37 L. Ed. 463 (1893)).

The foregoing case is directly in point, but before discussing it at some length, we call the Court's attention to the following facts: In the complaint we are talking about gold as a commodity (private property) and not as money. Gold does not became money until it has been mined, processed, bullionized,—(all at great expense to the owner); then purchased by the Government, minted, coined and stamped with its seal. But, under the Gold Regulations the Government, under penalty of fine and/or imprisonment, unlawfully compels plaintiff to accept a fixed price for her product and then undertakes to supply the requirement of the arts and industrial users of gold at the same price—$35 an ounce. Under our system of government, the right to sell to users of gold in itself is a property right which *gold producers and not the Government* are entitled to exercise.

In the *Monongahela* case Congress had passed an act for condemning what was known as "the upper lock and

dam of the Monongahela Navigation Company", and provided "that in estimating the sum to be paid by the United States, the franchise of said corporation to collect tolls should not be considered or estimated." The court held that this proviso was beyond the power of Congress; that it could not appropriate the property of the navigation company without paying its full value, and that a part of that value consisted in the franchise to take tolls. In the foregoing case Congress attempted to manipulate, or tried to affect the price to be paid for private property taken for public use and the Court held that this could not be done; rather, the determination of what constitutes just compensation is a judicial question. The legislature, therefore, may not by statute exclude what may be an essential element in making the just compensation provided for by the Constitution. In the case at bar the Government, by way of executive regulations—as distinguished from congressional act—tells the plaintiff that she must have a license to reduce her gold to usable form and that she must then sell to the Government, under severe penalties, at a price set by Government in its depreciated paper currency. This constitutes a flagrant violation of property rights protected by the Constitution. Plaintiff is not quarreling with the power of Government to assert its right of eminent domain. It being an incident of sovereignity, the right of eminent domain requires no constitutional recognition, but when the taking occurs, as has been done in this case, plaintiff is entitled to just compensation. Because of the importance of the Monongahela case, we ask the court's indulgence in quoting extensively

from it. Its reasoning and enunciation of law controlling the case at bar cannot be successfully challenged today. At page 324 of the U.S. report:

> "The question presented is not whether the United States has the power to condemn and appropriate this property of the Monongahela Company, for that is conceded, but how much it must pay as compensation therefor. Obviously, this question, as all others which run along the line of the extent of the protection the individual has under the Constitution against the demands of the government, is of importance; *for in any society the fullness and sufficiency of the securities which surround the individual in the use and enjoyment of his property constitute one of the most certain tests of the character and value of the government.* The first ten amendments to the Constitution, adopted as they were soon after the adoption of the Constitution, are in the nature of a bill of rights, and were adopted in order to quiet the apprehension of many, that without some such declaration of rights the government would assume, and might be held to possess, the power to trespass upon those rights of persons and property which by the Declaration of Independence were affirmed to be unalienable rights.
>
> "In the case of *Sinnickson v. Johnson,* 17 N.J.L. 129, 145, cited in the case of *Pumpelly v. Green Bay & M. Canal Co.,* 80 U.S. 13 Wall. 166, 178, it was said that 'this power to take private property reaches back of all constitutional provisions; and it seems to have been considered a settled principle of universal law that the right to compensation is an incident to the exercise of that power; that the one is so inseparably connected with the other, that they may be said to exist not as separate and distinct principles, but as parts of one and the same principle.' * * * And in this there is a natural equity which commends it to every one. It in nowise detracts from the power of the public to take what-

ever may be necessary for its uses; while, on the other hand, it prevents the public from loading upon one individual more than his just share of the burdens of government, and says that when he surrenders to the public something more and different from that which is exacted from other members of the public, a full and just equivalent shall be returned to him.

"But we need not have recourse to this natural equity, nor is it necessary to look through the Constitution to the affirmations lying behind it in the Declaration of Independence, for, in this 5th Amendment, there is stated the exact limitation on the power of the government to take private property for public uses. And with respect to constitutional provisions of this nature it was well said by Mr. Justice Bradley, speaking for the court, in *Boyd v. United States,* 116 U.S. 616, 635: 'Illegitimate and unconstitutional practices get their first footing in that way, namely by silent approaches and slight deviations from legal modes of procedure. *This can only be obviated by adhering to the rule that constitutional provisions for the security of person and property should be liberally construed.* A close and literal construction deprives them of half their efficacy, and leads to gradual depreciations of the rights, as if it consisted more in sound than substance. *It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon.*' * * *

"By this legislation Congress seems to have assumed the right to determine what shall be the measure of compensation. *But this is a judicial, and not a legislative question.* The legislature may determine what private property is needed for public purposes—that is a question of a political and legislative character; *but when the taking has been ordered, then the question of compensation is judicial.* It does not rest with the public taking the property, through Congress or the legislature, its repre-

sentative, to say what compensation shall be paid, or even what shall be the rule of compensation. The Constitution has declared that just compensation shall be paid, and the ascertainment of that is a judicial inquiry * * *

"In the last of these cases * * * will be found these observations of the court: '*The right of the legislature of the state, by law, to apply the property of the citizen to the public use, and then to constitute itself the judge in its own case to determine what is the "just compensation" it ought to pay therefor, or how much benefit it has conferred upon the citizen by thus taking his property without his consent or to extinguish any part of such "compensation" by prospective conjectural advantage, or in any manner to interfere with the just powers and province of courts and juries in administering right and justice, cannot for a moment be admitted or tolerated under our Constitution.* If anything can be clear and undeniable upon principles of natural justice or constitutional law, it seems that this must be so.' * * * We are not, therefore, concluded by the declaration in the Act that the franchise to collect tolls is not to be considered in estimating the sum to be paid for the property."

The foregoing case speaks for itself and is directly in point.

The fact that in the case at bar the Government has not already received the gold deposited by nature on plaintiff's property in Grant County is immaterial on the issue as to whether or not there has been a "taking", within the meaning of the due process clause of the Fifth Amendment. In determining whether there was a compensable taking, it is immaterial that the government did not itself operate the mine or effect a physical entry. The plaintiff's property "within the meaning of

the Fifth Amendment" is not limited to the physical thing; that is, the mine. Plaintiff's right, as owner, to produce gold from her mine is in itself "property" protected by the Constitution. The direct question was involved and decided by the case of *Pennsylvania Coal Co. v. Mahon,* 260 U.S. 393 (1922). The case involved the construction of a statute of the Commonwealth of Pennsylvania prohibiting the mining of anthracite coal under inhabited surface structures. In the chain of title the Coal Company had reserved the right to mine. If it mined, the surface structures would collaspe, whereupon the legislature passed the law in question. Mr. Justice Holmes, at page 415 of the U. S. Report had the following to say about the subject:

> "The protection of private property in the Fifth Amendment presupposes that it is wanted for public use, but provides that it shall not be taken for such use without compensation—when this seemingly absolute protection is found to be qualified by the police power, the actual tendency of human nature is to extend the qualification more and more until at last private property disappears; but that cannot be accomplished in this way under the Constitution of the United States. The general rule is, that while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking * * * in general it is not plain that a man's misfortunes or necessities will justify his shifting the damages to his neighbor's shoulders * * * we are in danger of forgetting that a strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the damage.
>
> As we have said, this is a question of degree—and, therefore, cannot be disposed of by general

> propositions, but we regard this as going beyond any of the cases decided by this Court."

The statute in question was held to be an unconstitutional taking of property without due process of law and the Coal Company prevailed.

The foregoing case is of utmost importance because it demonstrates that the right to produce coal was a compensable property right owned by the Coal Company. Likewise, plaintiff's right to produce gold is a compensable property right. What Mr. Justice Holmes said about the right to mine coal in Pennsylvania is equally true of the right to mine gold in Grant County, Oregon.

> "As said in a Pennsylvania case, 'For practical purposes, *the right to coal consists in the right to mine it.'* Commonwealth v. Clearview Coal Co., 256 Pa. St. 328, 331. *What makes the right to mine coal valuable is that it can be exercised with profit. To make it commercially impracticable to mine certain coal has very nearly the same effect for constitutional purposes as appropriating or destroying it."* (260 U.S. 393, 414)

The Government's policy of forcing a price in terms of inconvertible and depreciated paper currency, which price is unrealistic when compared to the high cost of labor and materials in the present day, effectively appropriates and destroys plaintiff's right to mine gold. What makes the right to mine gold valuable is that it can be exercised at a profit and when it cannot be exercised at a profit, her constitutional property rights are destroyed. She is not alone in her predicament for the United States will readily admit that the gold mining industry has

been all but eliminated from the American scene. This is a tragedy because of all industries, gold mining is alone in being non-competitive. When allowed to operate it creates new wealth to flow in our economic veins and that wealth has no competition. Any quantity of gold is readily accepted by all peoples and all nations.

It is immaterial that when the Government continuously deprives the plaintiff of her property—the right to mine gold—the Government does not itself exercise that right. To be a violation of the due process clause, it is sufficient that the plaintiff was deprived of property rights. It is also immaterial that there is not a physical invasion of her property. In *U. S. v. General Motors Corporation,* 323 U.S. 373, 378 (1945), the Court made the following observation:

> "In its primary meaning, the term "taken" would seem to signify something more than destruction, for it might well be claimed that one does not take what he destroys. But the construction of the phrase has not been so narrow. *The courts have held that the deprivation of the former owner rather than the accretion of a right or interest to the sovereign constitutes the taking. Governmental action short of acquistion of title or occupancy has been held, if its effects are so complete as to deprive the owner of all or most of his interest in the subject matter, to amount to a taking."*

To the same effect, see *U. S. v. Welch,* 217 U.S. 333 (1910); *Richards v. Washington Terminal Company,* 233 U.S. 546 (1914); *U. S. v. Dickinson,* 331 U.S. 745 (1947); and *Kimball Laundry Co. v. United States,* 338 U.S. 1 (1949).

Plaintiff is being deprived of her property daily in two different respects. First, she is prevented from making a profit because of the low, arbitrary and mandatory price fixed by the Treasury Gold Regulations; secondly, because of this very fact nobody else can make a profit and, therefore, for re-sale purposes the property is comparatively worthless. So, she has a potentially valuable property which is lying dormant, tunnels caving in and generally deteriorating, all because the Treasury Department misconstrued its authority by arbitrarily fixing a mandatory price on gold of $35.00 per fine ounce.

This taking is justified by the Government on the ground that Congress has authority "to coin money and regulate the value thereof" and, therefore, it can legally set a price on newly mined gold because *prior to 1934 some gold was coined into money.* We wonder what Anaconda Copper Company would say if its copper price was arbitrarily fixed at 10¢ a pound because of copper being used in pennies? Likewise, what would the reaction be if a silver price was fixed because of silver coins being made of the product? The same analogy could be drawn for nickel and even paper. Would the paper companies hold still if the Government would monopolize and fix an arbitrary price on all paper merely because paper is primarily used as money today? This analogy could even be somewhat ridiculously but logically extended to ink because ink is used in printing paper currency. The statutory provision for the purchase of metal for minor coinage (silver, nickel, and copper) is found in 55 Stat. 255, 31 U.S.C.A. Sec. 340:

> "* * * The superintendents, with the approval of the Director of the Mint as to price, terms and quantity *shall purchase the metal required for such coinage by public advertisement, and the lowest and best bid shall be accepted,* the fineness of the metals to be determined on the mint assay * * *"

That sounds to us like the American and Constitutional way for the United States to gain possession and ownership of metals (private property) from its citizens! A fortiori, *when gold isn't even being coined into money* the government should not be allowed to confiscate it at a price set by its own executive department. Gold isn't coined into money today, yet the government points to Article I, Section 8, of the Constitution to justify its monopoly of gold. *It isn't constitutional and it isn't fair!* Gold mine property owners are not receiving "Justice under Law."

Further, plaintiff is being deprived of property without due process of law in the following respect: Gold is invariably found with silver at a ratio of approximately 9 to 1. Gold must be licensed. Silver is not licensed. She is, therefore, prevented from processing her silver because of it's being tied with the gold. Therefore, she is prevented from making use of her silver without due process of law.

Another and more recent decision which controls the case at bar is *Edward P. Stahel & Co. v. U. S.,* 111 Ct. Cl. 682, 78 F. Supp. 800, Cert. den. 336 U.S. 951 (1948). In that case the Government had issued an order on October 16, 1941, requiring every owner of raw silk to sell it to the Defense Supplies Corporation, a Govern-

ment agency, and or to any person who was fulfilling parachute manufacturing contracts with the Government. A supplemental order required that every owner of raw silk report to the Office of Production Management the amount of raw silk that he had on hand. The Court reached the jugular vein when it used the following language in 78 F. Supp. at page 804:

> "We think that, by its order of October 16, the Government took the plaintiffs' silk for public use. It required the plaintiffs to sell their silk upon request, to those who would use it for the Government's purposes, or to the Government itself, and it forbade the delivery or use of the silk for any other purpose except by the specific license of the Government * * * *to say that when the Government forbids an owner of property to make any other use of it, and requires him to sell it, upon request, to the Government, or its designee who will use it for a Government purpose, is not a taking of the property for public use, would be to make the constitutional right contingent upon the form by which the Government chose to acquire the use of the property.*"

In the case at bar plaintiff is challenging the Government's constitutional right to force condemnation and requisition of her property at other than a reasonable price for her product measured in present day currency. If the Supeme Court holds that requisitioned silk must be paid for with a reasonable price when it is used for public purposes, we can see no distinction between it and gold fresh out of the ground at high cost of production.

In the case of *Youngstown Sheet & Tube Co. v. Sawyer,* 343 U.S. 579, 72 S. Ct. 863, 96 L. Ed. 1153

(1952), President Truman by executive order, directed the seizure of steel plants to avert a shutdown by strike thereof during the Korean War. It was the Persident's belief that the emergency caused by our soldiers dying on the battlefields justified his action and that he had authority to issue the order by accumulation of executive powers under the Constitution. The District Court granted plaintiff's motions for temporary injunctions against the executive department from enforcing the order and the Supreme Court affirmed the lower court. It was held that the seizure order was not within the constitutional power of the President and he had no Congressional authority to issue it. At p. 867 of the S. Ct. report, the court speaking through Mr. Justice Black stated that:

> "The Founders of this Nation entrusted the law-making power to the Congress alone in both good and bad times. It would do no good to recall the historical events, the fears of power and the hopes for freedom that lay behind their choice. Such a review would but confirm our holding that this seizure order cannot stand."

At p. 880 of the S. Ct. report, Mr. Justice Frankfurter made the following observation:

> "We do not know today what powers over labor or property would be claimed to flow from Government possession if we should legalize it, what rights to compensation would be claimed or recognized, or on what contingency it would end. With all its defects, delays and inconveniences, men have discovered no technique for long preserving free government except that the Executive be under the law, and that the law be made by parliamentary deliberations. Such institutions may be destined to

pass away, but it is the duty of the Court to be last, not first, to give them up."

Mr. Justice Douglas' concurring opinion at p. 887 reads in part as follows:

"The legislative nature of the action taken by the President seems to me to be clear. When the United States takes over an industrial plant to settle a labor controversy, it is condemning property. The seizure of the plant is a taking in the constitutional sense. United States v. Pewee Coal Co., 341 U.S. 114, 71 S. Ct. 670, 95 L. Ed. 809. A permanent taking would amount to the nationalization of the industry. A temporary taking falls short of that goal. But though the seizure is only for a week or a month, the condemnation is complete and the United States must pay compensation for the temporary possession. United States v. General Motors Corp., 323 U.S. 373, 65 S. Ct. 357, 89 L. Ed. 311; United States v. Pewee Coal Co., supra.

"The power of the Federal Government to condemn property is well established. Kohl v. United States, 91 U.S. 367, 23 L. Ed. 449. It can condemn for any public purpose; and I have no doubt but that condemnation of a plant, factory, or industry in order to promote industrial peace would be constitutional. But there is a duty to pay for all property taken by the Government. The command of the Fifth Amendment is that 'no private property be taken for public use, without just compensation.' That constitutional requirement has an important bearing on the present case."

Likewise in the case at bar, there is no constitutional or congressional authority any place to be found in the books whereby the executive department has the right to set a mandatory price for gold mined by a private property owner. If the steel companies can get their

property back from the executive department, why can't Mrs. Laycock "get her property back" so that she can make use of it at a profit?

In the Youngstown case Mr. Justice Clark at p. 882 of the Supreme Court report discusses the interesting early case of *Little v. Barreme,* 2 L. Ed. 243, 2 Cranch 170 (1804). In that case Congress had given special authority to the President to seize vessels bound or sailing *to* a French port. The President issued an order to seize the "Flying Fish" a vessel bound *from* a French port. It was held by a unanimous court speaking through Chief Justice John Marshall that the President's instructions had been issued without authority and that they could not "legalize an act which without those instructions would have been plain trespass."

In the case at bar, the Government cites the Trading With the Enemy Act as authority for the gold regulations, which in turn confiscates plaintiff's property. The Trading With the Enemy Act was designed to prevent gold, among other properties, from reaching and benefiting the *enemy during time of war.* Propper v. Clark, 337 U.S. 472, 93 L. Ed. 1480, 69 S. Ct. 1333 (1949). Further there is nothing in the act giving authority to fix a price for gold and particularly a price which makes it unprofitable to mine gold in the United States. The plaintiff is not an "enemy," and there would be nothing detrimental to the United States Government in allowing her as a citizen to make profitable use of her own property. The Barreme case is in point.

During the last war there was issued the Gold Mine Closing Order, October 8, 1942, known as L-208. The order had political implications. On December 19, 1941, Milo Perkins, acting under Vice-President Henry A. Wallace, Chairman of the Board of Economic Warfare, wrote a secret letter to Donald M. Nelson of the War Production Board, wherein he stated:

> "*A program of gradual reduction and final cessation of all new gold production spread over a period of fifteen to twenty years is the only satisfactory solution to the general gold problem.* This is the moment to institute such a program." (*Homestake Mining Co., v. U. S.*, Ct. Cl. No. 50,195, see Commissioner Day's Findings, p. 84).

As a result of the Gold Closing Order several cases are pending in the United States Court of Claims for damages under the Fifth Amendment to the Constitution. On March 30, 1954, Commissioner Day in Case No. 50,195, *Homestake Mining Company v. U. S.*, at page 121 made the following Findings:

> "64. By reason of the issuance of Order L-208 Homstake was deprived of the use and benefit of ownership of its gold-mining properties, to wit, *the right to obtain gold from the ore bodies on its properties and to sell such gold.*
>
> 65. No compensation has been paid to plaintiff Homestake by defendant for the closing of its mine as hereinbefore described."

We can see no distinction between a direct order shutting down gold mines and a license having the same effect with a price set by Government in terms of depreciated paper currency which, in effect, economically strangles the mine into extinction. The foregoing Find-

ings are presented as direct authority for our position in the case at bar.

Gold is not an evil product. It serves humanity in many useful respects. For example, it is used widely in the dental profession, jewelry trade and the electrical industry. For many years the United States has not mined enough gold to take care of our commercial needs. The picture is partially reflected in the Report of the Director of the Mint, 1953:

> "*GOLD RECEIPTS:*
>
> 4,345,579 fine oz. $ 152,095,264
> of which
> 1,470,942 fine oz. 51,482,982
> were from newly mined domestic production.
>
> *WITHDRAWALS:*
>
> 29,592,874 fine oz. $1,035,750,578
> including
> 2,079,904 fine oz. 72,792,630
> issued for domestic, industrial, professions, or artistic purposes. Other withdrawals were principally in connection with the United States settlement of international balances."

The total gold holdings of the Bureau of the Mint Institutions at the beginning of the fiscal year of 1953 were $23,346,409,526.73, and at the close of the fiscal year $22,462,754,212.65—a net decrease in holdings during the year of $883,655,314.08. This diminution in our gold supply is directly caused by the arbitrary fixed price which makes gold mining unprofitable.

Neither gold mining nor its product is an evil and, therefore, the production and sale of gold are not subject to the same general rules which apply to the pro-

duction and sale of narcotics, intoxicating liquors, cigarettes and so forth. Consequently, the defendant is not in a position to deny the plaintiff compensation on the ground that this case is like *Mugler v. Kansas,* 123 U.S. 623 (1887), which involved a state statute prohibiting the manufacture of intoxicating liquors, or *Hamilton v. Kentucky Distilleries Co.,* 251 U.S. 146 (1919), the War-Time Prohibition Act or cases such as *Austin v. Tennessee,* 179 U.S. 343 (1900), the sale of narcotics.

The foregoing cases, and cases to be presently cited, exclude the applicability of the foregoing rule. Likewise, the case at bar is not governed by the rule of law that compensation is not allowable where the injuries are merely consequential in that they result from the exercise of lawful power. The unrealistic and fixed price for gold operates directly against plaintiff's property and and by its regulations *the Government demands the gold. In case she refuses to give her gold to the Government at 35 depreciated dollars she has the alternatives of (1) going to jail and/or paying a fine; or (2) leaving it in the ground.*

A brief reference to cases in which the Supreme Court held that a taking has occurred as against "consequential" injury points up the justice inherent in plaintiff's claim. In *United States v. Dickinson,* 331 U.S. 745 (1947), the Supreme Court held that property is "taken" within the meaning of the Constitution "when inroads are made upon the owner's use of it to an extent that, as between private parties, a servitude has been acquired either by an agreement or in the course of

time." In *United States v. Causby,* 328 U.S. 256 (1946), it was held that where the noise and glaring lights of planes landing at or leaving an airport leased to the United States, flying below the navigable air space as defined by Congress, interfere with the normal use of a neighboring farm as a chicken farm, there is such a taking as to give the owner a constitutional right to compensation.

That the Government had imposed a servitude on land adjoining its fort so as to constitute a taking within the law of eminent domain may be found from the facts that it had repeatedly fired the guns of the fort across the land and had established a fire control service there. (*Portsmouth Harbor Land & Hotel Co. v. United States,* 260 U.S. 327 (1922), *Cf. Portsmouth Harbor Land & Hotel Co. v. United States,* 250 U.S. 1 (1919); *Peabody v. United States,* 231 U.S. 530 (1913). A corporation chartered by Congress to construct a tunnel and operate railway trains therein was held liable for damages in the suit by an individual whose property was so injured by smoke and gas forced from the tunnel as to amount to a taking of private property. (*Richards v. Washington Terminal Co.,* 233 U.S. 546 (1914).

In *United States v. Lynah,* 188 U.S. 445, plaintiff's rice planation was reduced to a valueless bog as a result of an improvement in navigation undertaken by the government. Action was commenced in the United States District Court for the District of South Carolina to recover $10,000 as compensation. The government claim-

ed that the damage, if any, was done in improving the navigability of a navigable river; that it is given by the Constitution full control over such improvements, and that if in doing any work therefor injury results to riparian proprietors or others, it is an injury which is purely consequential, and for which the government is not liable. At page 471 of the U. S. Report is the following language:

> "But if any one proposition can be considered as settled by the decisions of this court it is that, although in the discharge of its duties the government may appropriate property, it cannot do so without being liable to the obligation cast by the 5th Amendment of paying just compensation. * * * Therefore, following the settled law of this court, we hold that there has been a taking of the lands for public uses, and that the government is under an implied contract to make just compensation therefore."

Blackstone, in his Commentaries, at page 129 recognizes three absolute rights possessed by all individuals in a free society: (1) The right of personal security; (2) the right of personal liberty; and (3) the right of private property. The individual's absolute right to property consists in the "free use, enjoyment, and disposal of all his acquisitions, without any control or diminution, save only by the laws of the land." (Blackstone Commentaries, p. 138). The common law of England, which Blackstone discussed, was the law of the original thirteen colonies at the time of our revolution. It was, therefore, natural that before the United States Constitution was ratified by the several states there be a provision preventing the federal government from taking private

property without full indemnity to the owner. Thus we find the background and reason for the Fifth Amendment.

Just compensation means the full and perfect equivalent, in money, of the property taken. (*Monongahela Nav. Co. v. United States,* 148 U.S. 312, 326 (1893). The owner's loss, not the taker's gain is the measure of such compensation. (*United States ex rel. v. T. V. A. v. Powelson,* 319 U.S. 266, 281 (1943); *United States v. Miller,* 317 U.S. 369, 375 (1943); *Boston Chamber of merce v. Boston,* 217 U.S. 189, 195 (1910). Where the property has a determinable market value, that is the normal measure of recovery. (*United States ex rel. T. V. A. v. Powelson,* 319 U.S. 266, 275 (1943); *United States v. New River Collieries Co.,* 262 U.S. 341 (1923). Market value is "what a willing buyer would pay in cash to a willing seller". (*United States v. Miller,* 317 U.S. 369, 374 (1943).

Plaintiff is not willing to sell her gold to the Government for 35 of its paper dollars. 35 depreciated paper dollars does not constitute "the full and perfect equivalent in money of the property taken". If the market were allowed free play, an ounce of fine gold would in all probability settle down to around $100.00. If that's what the market says a fair price for gold is, then under the Constitution, she is entitled to it.

The discrimination of the existing regulations must be self-evident. The Government says to the domestic gold producer, you must either sell your goods to the Government or close shop or go to jail. In effect that

says to the producers, you must work for the Government. You must operate in a competitive labor market. You must pay Government-levied taxes and pay Government-fixed social-security benefits. Your product, however, must be sold to the government and only to the Government at a price which the Government determines. This is wrong. Further, if it is a denial of due process of law to forbid negro students the liberty to attend public schools of their choice, (*Bolling v. Sharpe*, 347 U.S. 497 (1954), why isn't it a denial of due process to deprive gold mine owners the liberty to attend the market place of their choice and compete for a price for their product on equal terms as do other industries in this free country? Of all legitimate industries in America, why should the United States single out the gold industry for this separate treatment? Why should the gold industry, and not the copper, nickel, or silver industries, be selectively treated as to a mandatory price? Copper, nickel and silver are coined into money in the present day—gold isn't. Yet, the gold industry is destroyed because it can't keep up with paper inflation when the price of gold is fixed at the 1934 level. This is outright discrimination and is wrong. Further, it is contrary to our concept of freedom and in violation of constitutional law! Now is the time, we submit, for this court to make clear that this is not what our Constitution stands for.

Preliminary Statement to Gold Clause Decisions

Under Article I, Section 8 of the Federal Constitution, Congress is given the power to "coin money and regulate the value thereof." Congress cannot coin money

out of gold and regulate its value until it has acquired possession of the gold by purchase. But, by assuming that gold just exists without production costs and by ignoring the Constitution, Congress in the early 30's attempted to give the executive branch of the Government absolute power over all gold irrespective of its form, location, or ownership. Gold coins and gold certificates were called in and irredeemable paper currency substituted. Contracts demanding payment in gold were repudiated and held to be against public policy. Citizens were effectively deprived of the right to own gold. (Communist countries and the United States are companions in this prohibition.) Moreover, the President went further and assumed power to control all gold produced in this country by imposing license requirements and otherwise regulating the production, processing and possession of gold. The market price for gold at the time was $34.45 per fine ounce and the Treasury Department rounded this figure off to $35.00 and made the price mandatory for all new gold. Previously the Treasury price had been $20.67 *but producers were free to enter any market they chose for disposal of their product.*

Powers not specifically delegated by the Constitution to the three branches of Government are reserved to the sovereign people. (Tenth Amendment, Constitution of the United States.) It is the plaintiff's theory in the case at bar that under the Constitution, Congress was not given the power to arbitrarily create circumstances which prevent her from making use of her property or to regulate and/or confiscate privately owned gold in the

ground or in its transition to usable form. Further, the carte' blanche' attempt to delegate a legislative function to the executive was in itself a violation of the Constitution. Indeed, under the provision of the Constitution covering the coinage of money, the President and Secretary of the Treasury had no more right to confiscate and regulate the ownership of gold mined in the future than *they had to confiscate and regulate the ownership of future silver, nickel, copper or paper—also monetary elements.* The Constitutional provision under which they purported to act confers power only with respect to *money and the value thereof.* It cannot be expanded to embrace gold in the ground or gold in its transition to commodity form *before* it gets into the lawful possession of the Government.

It is, therefore, plaintiff's contention that legislation and executive orders (1) depriving her of the right to possess gold in its transition from the ground to usable form; (2) requiring her to be licensed to process the ore bodies in extracting gold therefrom; (3) creating a vice-like monopoly of her gold in the Federal Government once the extraction process commences; (4) requiring her to sell her gold only to the Government and to accept 35 of that government's inconvertible and depreciated paper dollars per fine ounce therefor; and (5) subjecting her to a maximum penalty of 10 years in prison or $10,000.00 fine, or both, for failure to comply, are unconstitutional and void.

The Gold Clause Decisions

In the case at bar the laws and regulations under direct attack are the Trading with the Enemy Act of 1917, as amended in 1933 and Executive Order 6260 promulgated thereunder (Title 12, U.S.C.A., Sec. 95a); the section of the Gold Reserve Act of 1934 giving the Secretary of the Treasury power to regulate gold (Title 31, U.S.C.A., Sec. 442); and the Treasury gold regulations promulgated thereunder on July 14, 1954.

The Gold Clause Decisions, on the other hand, deal with none of the foreging provisions, but rather are concerned with (1) the constitutionality of the Thomas Amendment to the Agricultural Adjustment Act authorizing the President to reduce the content of the gold dollar; (2) that part of the Gold Reserve Act of January 30, 1934, withdrawing all gold coin from circulation (31 U.S.C.A., Sec. 315b); (3) the Presidential directive of January 31, 1934, in which the gold "dollar" was reduced in gold content (Proc. No. 2072, 48 State. 1730, expired June 30, 1943—Note 31 U.S.C.A., Sec. 821); and (4) the Joint Resolution of June 5, 1933 (48 Stat. 113, 31 U.S.C.A., Sec. 436) making incovertible paper currency legal tender for all debts, public and private. None of the foregoing provisions of the law is being challenged in the case at bar and the Gold Clause cases do not control in any respect its ultimate decision. However, because of almost universal first impression to the contrary, we will briefly discuss the cases herein.

It is well settled law that the power conferred on Congress by the Constitution cannot be delegated to

another department. (*Panama Refining Co. v. Ryan,* 293 U.S. 388; *Schechter Corp. v. United States,* 294 U.S. 495). Yet, the legislative department authorized the President, by senate amendment to the House Agricultural Adjustment Bill, to reduce the content of the gold dollar but not below 50%. The purpose of the original Act was explained in its preamble as follows: (48 Stat. 31)

> "To relieve the existing national economic emergency *by increasing agricultural purchasing power* * * *"

The senator who incorporated the amendment to the House Bill (i.e. the so-called Thomas Amendment) explained its purpose as follows:

> *"The amendment has for its purpose the bringing down or cheapening of the dollar, that being necessary in order to raise agricultural and commodity prices* * * * The first part of the amendment has to do with conditions precedent to action being taken later.
>
> It will be my task to show that if the amendment shall prevail it has possibilities as follows: It may transfer from one class to another class in these United States value to the extent of almost $200,000,000,000. This volume will be transferred, first from those who own the bank deposits. Secondly, this value will be transferred from those who own bonds and fixed investments." (Congressional Record, April, 1933, pp. 2004, 2216-7, 2219.)

Few people realize or understand that the reduction in the gold content of our imaginary gold "dollar" which in turn formed the basis for the $35 price for gold had its origin in the foregoing legislation. *Its purpose was not*

to shackle future mine owners with a $35 price, but rather to raise farm prices during the depression. But, when the executive order came along on January 31, 1934, cutting the "gold dollar" a different purpose was set forth therein: (48 Stat. 1730)

> "WHEREAS, I find, upon investigation, that the foreign commerce of the United States is adversely affected by reason of the depreciation in the value of the currencies of other governments in relation to the present standard value of gold, and that an economic emergency requires an expansion of credit; and
>
> WHEREAS, I find, from an investigation, *that in order to stabilize domestic prices and to protect the foreign commerce against the adverse effect of depreciated foreign currencies,* it is necessary to fix the weight of the gold dollar at 15-5/21 grains.
>
> NOW, THEREFORE, etc * * *"

Still there is obviously no intent to impose upon gold miners a mandatory price for their product of $35.00 per fine ounce. *In fact, nowhere does there appear in any legislation, authority for the Treasury Department to fix a mandatory price on gold of $35.00 per fine ounce* or any other price! And, nowhere can there be found any legislation as authority for imposing a fixed price upon gold miners for their newly mined product.

Origin of the $35.00 Price

From 1834 to 1934 the Treasury had purchased gold at the rate of $20.67 per fine troy ounce, *but that price was never forced upon anyone.* It was not embodied in any law and owners of gold could take it or leave it. Indeed, at the time of the proclamation of January 31,

1934, the market price for gold was $34.45 per fine troy ounce. So, when the $35 price was decided upon by the President, gold was increased by 55¢ over the market price. Devaluation was accomplished by establishing the weight of the gold dollar at 15-5/21 grains, nine-tenth fine. This reduced its gold content by 40.94 percent, making the new "dollar" 59.06 percent of the gold content of the old. As a result, an ounce of fine gold (480 grains) could be coined into 35 dollars compared with 20.67 dollars before the devaluation. The weight of the gold dollar was thus changed from 23.22 to 13.714 grains of pure gold, or from 25.8 to 15-5/21 grains of standard gold 0.900 fine. Note, however, that it is not precise language to talk about the "gold dollar" after *January 30, 1934,* because it had been destroyed and eliminated by the enactment of the Gold Reserve Act on that date. (Title 31 U.S.C.A., Sec. 315b, 48 Stat. 340). It seems impossible to be able to cut the "gold dollar" on January 31, 1934—the date of the presidential proclamation,—when it was no longer in existence. Be that as it may, the act further provided that the Treasurer may make gold regulations (See 31 U.S.C.A., Sec. 442). But even in the gold regulations it is not clear that the $35.00 price is mandatory for newly mined gold. It is only after he has applied for a license that the miner is "hooked" into the price. This is so because if he just keeps his gold, he goes to jail, and if he relinquishes it to the government, it pays one price only—35 paper dollars.

In 1936 the Agricultural Adjustment Act was held unconstitutional for taking money from one class for

the benefit of another (*U. S. v. Wm. M. Butler, et al., Receivers of Hoosac Mills Corp.*, 297 U.S. 1), but in the meantime, on January 31, 1934, the President had acted on the Senate Amendment and cut the gold dollar. (Proc. No. 2072, 48 Stat. 1730, expired by its own volition June 30, 1943, see note 31 U.S.C.A., Sec. 821).

Among the powers conferred on Congress by the Constitution is "to coin money, regulate the value thereof, and of foreign coin". (Article I, Section 8, Clause 5). By this provision authority over money was given to Congress alone. Neither in Article I creating the legislative department, nor in Article II, establishing the executive department, is there any intimation that the President should have anything to do with regulating the value of money. The power was withheld from him. By being withheld—that is, not granted, it was prohibited. Therefore, it was for Congress to determine whether the content of the dollar was to be changed, and, if so, to change it. Nevertheless, the president was allowed by Congress to perform its task of fixing the value of the dollar, so on January 31, 1934, the President "directed that the standard gold dollar be reduced from 25.8 grains to 15-5/21 grains".

The Joint Resolution of June 5, 1933, (48 Stat. 113; 31 U.S.C.A., Sec. 463) declared that provisions requiring "payment in gold or a particulalr kind of coin or currency" were "against public policy", and provided that "every obligation, heretofore or hereafter incurred, whether or not any such provision is contained therein", shall be discharged "upon payment, dollar for dollar,

in any coin or currency which at the time of payment is legal tender for public and private debts".

Suits by a holder of Government bonds, a holder of a government gold certificate and a holder of a railroad bond reached the Supreme Court, were argued together, and decided by several opinions which were generally called the Gold Clause Decisions.

The positions and the contentions of the various parties are interesting, but more interesting are the contentions and questions which were not raised or presented.

No party challenged the authority of the Government to seize all gold coin, bullion and certificates. No party challenged the authority of Congress or of the President to debase the gold dollar which Congress had fixed at 25.8 grains of gold and declared to be the standard unit of value. One opinion said that such matters had not been considered by the Court because they had not been presented. (294 U.S., p. 370).

The parties contended that the Joint Resolution declaring all coins and currencies legal tender dollar for dollar was unconstitutional, in that it deprived them of property without due process of law and without just compensation.

Each party *assumed* that the dollar of 25.8 grains of gold had been debased. *Implicit in that assumption was the assumption that Congress had power to debase it.*

Each party sought to recover paper currency equal to the amount of gold promised by his contract, measured by a gold dollar of 25.8 grains. But the debtors tendered only paper currency for equal number of dollars, which under the statute was equivalent to 15-5/21 grains of gold for each dollar face amount of currency. Assuming that the value of such currency was 15-5/21 grains for each dollar face amount of such currency, the paper currency tendered evidenced approximately 40 per cent less gold than the amount promised by the obligation.

The holder of the railroad bond had sued upon a coupon which promised $22.50 in gold coin of a standard of 25.8 grains to the dollar and asked judgment for $38.10 face amount in the new paper currency. (*Norman v. B. & O. R. Co.,* 294 U.S. 240).

The holder of a gold certificate of the Treasury of the United States for $106,300.00 each of 25.8 grains asked judgment for $170,634.07 in the new paper currency. (*Nortz v. United States,* 294 U.S. 317).

The holder of a government bond which had promised payment of $10,000.00 in gold of the standard of 25.8 grains to the dollar asked judgment for $16,931.25 in the new paper currency. (*Perry v. United States,* 294 U.S. 330).

Thus, each party claimed that the promise was an obligation to pay in gold coin based upon a dollar of 25.8 grains, and each party sought the face amount of paper currency which he alleged to be the equivalent of gold promised.

Thus, by the very statement of his claim, each party had implicity admitted: (a) That the government had power to debase the dollar or unit of value, and that the government had done so, and (b) that the government had power to make inconvertible currency legal tender not only for private debts, but even for the obligations of the government itself, such as gold certificates or government bonds.

In the Perry case the court held in a 5 to 4 decision, that the Fourth Liberty Bonds of the United States, which promised to pay the buyer (the lender of money to the Government) "in United States gold coin of the present (1918) standard of value", *could not be repudiated as to the form of payment*. The bonds having been issued under the clause of Section 8 of Article I of the Constitution authorizing Congress "to borrow money on the credit of the United States", and being affected by the provision of the Fourteenth Amendment that "the validity of the Public Debt of the United States authorized by law * * * shall not be questioned", those quoted expressions stating the sovereign will of the people, it was not within the power of Congress, a servant of the people with inferior authority "to override their will thus declared". The court stated its conclusion that:

> "The joint resolution of June 5, 1933, insofar as it attempted to override the obligation created by the bond in suit, *went beyond the congressional power*". (*Perry v. United States,* 294 U.S. 330, 354).

This holding meant that the laws were unconstitutional and were wiped off the books as to government

bonds and that's the law today. But, the bond holder won a hollow victory. He got a favorable judicial declaration that he should be paid in gold but that he wasn't damaged because gold had been seized and withdrawn from circulation. Further, there was no damage for the reason that "plaintiff has not shown, or attempted to show, that in relation to buying power he has sustained any loss whatever." (294 U.S. 330, 357).

In the other two decisions the gold clauses involved were held to be invalid as obstructing the power of Congress to regulate the value of money.

The opinions are limited to the effect of gold clauses in contracts and the legal tender required to discharge the obligation. The cases do not stand as authority for declaring that the plaintiff in the case at bar has no cause of action. The President's directive cutting the gold content of the dollar is not here involved. Neither is the Joint Resolution of June 5, 1933, making all coins and currencies legal tender dollar for dollar. Further, the Gold Reserve Act of 1934 is not involved in the same respect in which it was involved in the Gold Clause Decisions. Here, the Act is attacked because it is a claimed source of authority for the treasury regulations requiring gold to be processed during its productive phase only under Treasury licenses and that thereafter it must be sold *only* to the Government for 35 depreciated and irredeemable paper dollars. The plaintiff would not necessarily quarrel with the Treasury paying $35.00, *provided that it didn't have a monopoly as to gold,—forcing owners to sell to the Government at its price or go to prison.*

If she were allowed to enter the market place and compete for a reasonable price for her product as do owners of other commodities, she would be a wealthy woman today. But, because of the economic straight-jacket imposed upon her by the gold regulations, she may be characterized as "property poor".

Legal Tender Decisions

Before leaving the Gold Clause Decisions, we deem it necessary to point out obvious errors perpetuated therein. We feel free to do so not only because of the practical aspect of the problem, but because of an early statement made by Mr. Justice Taney in 7 Howard at page 470:

> "I * * * am quite willing that it be regarded hereafter as the law of this court, that its opinion upon the construction of the Constitution is always open to discussion when it is supposed to have been founded in error, and that its judicial authority should hereafter depend altogether in the force of the reasoning by which it is supported."

In the second Legal Tender decision the following erroneous statements were made:

> "By the Act of June 28, 1834, a new regulation of the weight and value of gold coin was adopted and about six per cent was taken from the weight of each dollar * * * The effect of this was that all creditors were subjected to a corresponding loss.
>
> The creditor who had a thousand dollars due him on the 31st day of July, 1934 (the day before the Act took effect) was entitled to a thousand dollars of coined gold of the weight and fineness of the existing coinage. The day after he was entitled only to a sum 6 per cent less in weight and

in market value, or to a smaller number of silver dollars.

No one ever doubted that a debt of one thousand dollars contracted before 1834, could be paid by one hundred Eagles coined after that year, though they contained no more gold than ninety-four Eagles such as were coined when the contract was made, and this not because of the intrinsic value of the coin, but because of its legal value." (12 Wallace, pp. 551-552.)

The fact is that Congress in 1834 *did not debase the monetary unit*. A glance at the first Coinage Act (1792) shows that we were on a silver standard at that time, the dollar being measured by 371.25 grains of pure silver. The gold dollar did not even come into existence until 1849 (9 Stat. 397) and we didn't change to the gold standard until 1873 (17 Stat. 426). When the Act of June 28, 1834 was passed it was profitable to ship gold coins in existence at that time, namely, the Eagle, Half Eagle and Quarter Eagle, out of the country. What Congress actually did was to remove enough grains from those coins to bring their bullion value in line with the measuring device of silver. Nobody was subjected to a loss and conversely nobody received a gain. What Congress was doing was exercising its lawful function of regulating the value of money, using its national standard of value as the measuring stick. The error of fact made by the Court in the second Legal Tender decision has lived to plague the courts to the present day. In the Norman case (294 U.S. at page 305) the Supreme Court perpetuated the error in the following language:

"The Court referred to the Act of June 28, 1834, by which a new regulation of the weight and value

> of gold coin was adopted, and about six per cent was taken from the weight of each dollar. The effect of the measure was that all creditors were subjected to a corresponding loss, as the debts then due 'became solvable with six per cent less gold than was required to pay them before.' But it had never been imagined that there was a taking of private property without compensation or without due process of law. The harshness of such legislation, or the hardship it may cause, afforded no reason for considering it to be unconstitutional."

The foregoing statements seem incredible in light of the true fact. They are all the more incredible when it becomes known that it was Justice Charles Evans Hughes himself who considered the Legal Tender Decisions "one of the three self-inflicted wounds which the Court had brought upon itself." (Supreme Court of the United States by Charles Evans Hughes.)

The case at bar is not a legal tender case. Plaintiff it not quarreling with the proposition of accepting inconvertible paper "dollars" for her product. She is perfectly willing to give the Government an exclusive contract for her entire output of gold. What she does claim is that she is entitled to enough of the inconvertible and depreciated paper dollars to equal full and fair compensation for her product. This is required under the due process clause and is necessary in order that she may pay today's higher wages and costs and still make a profit. Therefore, the Gold Clause Decisions are not controlling, although as we construe the Perry case, the reduction in the gold content of the imaginary gold dollar was and is unconstitutional. But even if construed

otherwise, plaintiff's case is not controlled by the decisions. Neither is it controlled by the so-called Legal Tender Decisions which formed the background authority for the practical result of the Gold Clause Decisions.

In the Nortz case, 294 U.S. at page 328 is found the following language:

> "Plaintiff explicity states his concurrence in the Gavernment's contention that the Congress has complete authority to regulate the currency system of the country. He does not deny that, in exercising that authority, the Congress had power 'to appropriate unto the Government outstanding gold bullion, gold coin and gold certificates.' Nor does he deny that Congress had authority 'to compel all residents of this country to deliver unto the Government all gold bullion, gold coins and gold certificates in their possession.' These powers could not be successfully challenged. *Knox v. Lee,* 12 Wall. 457; *Juilliard v. Greenman,* 110 U.S. 421; *Ling Su Fan v. United States,* 218 U.S. 302; *Norman v. Baltimore & Ohio R. Co.,* decided this day, ante, p. 240."

Since the powers were not challenged, it would seem to us that the foregoing statement of the court is pure dicta and, therefore, not controlling upon any future court decisions. Since the plaintiff had not questioned the power of the Government to compel residents to deliver unto the Government all gold coin, gold bullion and gold certificates in their possession, the court obviously could not decide that question. Therefore, at best the foregoing observation is dictum and without any force as a decision. The Court said:

> "These powers could not be successfully challenged." (Citing cases)

The fact is that no one of the decisions cited support the statement as made and in no one of those cases was any such question presented. *Knox v. Lee* and *Juilliard v. Greenman* did not present that question and neither of those opinions attempted to decide it. *Ling Su Fan* did not involve gold coins or the law of the United States and was no authority for the statement. *Norman v. B. & O. R. Co.* presented no such question and the opinion did not attempt to decide it.

The following statement was made in the *Norman* opinion in 294 U.S. at page 304:

> "Moreover, by virtue of this national power, there attaches to the ownership of gold and silver those limitations which public policy may require by reason of their quality as legal tender and as a medium of exchange. *Ling Su Fan v. United States,* 218, U.S. 302, 310. Those limitations arise from the fact that the law 'gives to such coinage a value which does not attach as a mere consequence of intrinsic value.' Their quality as legal tender is attributed by the law, aside from their bullion value."

The statement was repeated in the opinion on Government bonds at page 356. The statement is erroneous in several respects. The Court in its opinion was talking about gold coins and that their ownership is subject to the limitations which public policy may require because of their quality as legal tender and as a medium of exchange.

When the opinion was rendered, the statement meant nothing because gold coins had been abolished by the Gold Reserve Act on January 30, 1934. After that date gold coin could not legally exist in the United States

and, therefore, had no quality as legal tender or as a medium of exchange. The statement continued and said that the law gives to gold coinage a value which does not attach as a mere consequence of intrinsic value and that the quality of gold coins as legal tender is attributed by the law "aside from their bullion value". The meaning of that statement is that the law of the United States gave to gold coins a value different from their intrinsic or bullion value and its clear implication is that the law of the United States gave to gold coins a value in legal tender in excess of their intrinsic or bullion value. Neither the statement nor the implication is correct because they are both contrary to fact.

Every Legal Tender Act of the United States has limited the quality of gold coins as legal tender to their actual bullion or intrinsic value. The Coinage Act of 1772 (1 Stat. 250), the Act of 1834 (4 Stat. 700), the Act of 1873 (17 Stat. 420) and the Legal Tender Act of June 5, 1933, which was quoted by the court as a footnote to its opinion (294 U.S. 292), the latter being currently in the law books at 31 U.S.C.A., Sec. 462 (48 Stat. 113).

In an earlier opinion, the Supreme Court had stated the reason for thus limiting the legal tender capacity of gold coins. It had said that all men accept the fact that value was inherent in gold and that because the gold dollar was certified by the Government to be a certain weight and purity, it had been declared to be legal tender in payment of debts. (*Bronson v. Rodes,* 7 Wallace 229). In face of the statutes and its former opinions, the

Court in 1935 erroneously stated that the law gives to gold coins a quality as legal tender apart from their bullion value. *If the law could do that, then there would be no reason for regulating the value of coined money.* Congress could give us a small gold coin of quality as legal tender for thousands of dollars and thus make a gold coin legal tender without any regard for its bullion value or its intrinsic value. In justifying its statement, the Court cites *Ling Su Fan v. U. S.,* 218 U.S. 302, 310, and lifts some language out of the context. The language as it appears in the Ling Su Fan opinion is as follows:

> "Conceding the title of the owner of such coins, yet there is attached to such ownership those limitations which public policy may require by reason of their quality as a legal tender and as a medium of exchange. These limitations are due to the fact that public law (of the Philippine Islands) gives to such (silver) coinage a value which does not attach as a mere consequence of intrinsic value. The quality as a legal tender is an attribute of law aside from their bullion value."

However, when the facts are examined, it becomes apparent that the citation had no place in the Gold Clause Decisions. By rephrasing some of the language in the opinion, the Court took a statement out of its context and gave to it a meaning entirely different from its meaning in the original context. The statement made in the Ling Su Fan opinion did not relate to gold coins and did not relate to law of the United States. It related only to the subsidiary silver coins of the Philippine Islands and to the law of the Philippine Islands. Beyond that, the statement as made in the Philippine Island case gave to the subsidiary silver coins a value as legal

tender *less* than their bullion value. In the Gold Clause opinions of 1935, the court applied that statement to the law of the United States, which gave to paper currency a value as legal tender *greater* than its gold equivalent. The situation becomes more ridiculous when the facts in the Ling Su Fan opinion are fully stated. A gold peso containing 12.9 grains of gold was the unit of value in the Islands. The Islands also used a silver peso containing 416 grains of standard silver. The proportion of the metals were wrong so that the bullion value of the silver peso in Hong Kong was about 9% greater than its face value and for that reason the silver coins of the Islands were being exported for profit. In order to keep the silver coins as a medium of exchange, the Islands made it a criminal offense to export them. Ling Su Fan was convicted of exporting Philippine Island silver coins. On his appeal to the Supreme Court of the United States he contended that the law of the Islands prohibiting the export of such silver coins deprived him of his property in such coins without due process of law. The Court held that if the local coinage was demanded by the general interest of the Islands, legislation to keep such coinage in the Islands as a medium of exchange was not a violation of a private right.

After stating the claim that the law of the Philippine Islands deprived the owner of his property without due process of law by prohibiting the exportation of silver coins, the opinion made the statement which has been previously quoted herein. Under the facts presented in the Philippine Islands' case the statement was correct

and true as applied to the silver peso of the Islands under Philippine law. The statement meant that one who acquired Philippine coins in the Philippine Islands held them subject to the law of the Islands, which prohibited their exportation because they were legal tender and the medium of exchange. It also meant that the law of the Philippine Islands gave to such silver coins a value of legal tender less than their bullion value, but in 1935, the majority of the Supreme Court in the Gold Clause Decisions took the statement out of its context and applied it to gold coins and to the law of the United States.

Other indisputable facts magnify the error. The Philippine peso of 12.9 grains of gold was also called a dollar. Since the Islands belonged to the United States, the Philippine peso, which was only half the weight of our dollar might be considered a coin of the United States and for that reason might be considered legal tender under the phrase "dollar for dollar". Both the Senate and the House quickly recognized that *legal tender should coincide with actual value*. The Senate Committee Report said:

> "In making all coins and currencies of the United States legal tender the Thomas Amendment has created confusion, which was not intended, in the provisions of preexisting law relating to gold coins when below standard weight, subsidiary coins and minor coins. Philippine coins may also have been made legal tender for payment of debts in the continental United States, contrary to the real intent. These uncertainties should be removed." (Senate Report No. 7, 73rd Cong., First Session.)

The House Committee Report said:

> "The second section of the Resolution is a clarification of a clause in the Act approved May 12, 1933. Under that Act as passed, coins of the Philippines would be legal tender in the United States and abrased gold coins would be legal tender at their face value. This situation, which occurred through inadvertence, should be corrected as is done by the Resolution." (House of Representatives Report No. 169, 73rd Cong., First Session.)

Congress further recognized the intrinsic value of the gold dollar when by the Act of June 19, 1934, more than $23,000,000 was appropriated out of the Treasury to make good the gold equivalent of the loss sustained by the Philippine government on its deposits in this country as a result of the debasement of our dollar.

Bretton Woods Agreement

In July, 1944, there was held in Bretton Woods, New Hampshire, a United Nations Monetary and Financial Conference. At this meeting there were representatives of forty-four nations. Agreement was reached on the establishment of an International Monetary Fund and an International Bank for Reconstruction and Development. The Fund proposed to promote exchange stability between member nations. The conference was divided into three Technical Commissions. Commission I was entitled "International Monetary Fund", its Chairman being Harry Dexter White of the United States. Commission II was entitled "Bank for Reconstruction and Development" with Lord Maynard Keynes of the United Kingdom as its Chairman.

We quote the following portions of the final Agreement regarding the International Monetary Fund:

> "Article IV
>
> Par Value of Currencies
>
> Section 1. Expression of par values—
>
> (a) The par value of the currency of each member shall be expressed in terms of gold as a common denomination or in terms of the United States dollar of the weight and fineness in effect on July 1, 1944.
>
> (b) All computations relating to currencies of members for the purpose of applying the provisions of this Agreement shall be on the basis of their par values.
>
> Section 2. Gold purchases based on par values—
>
> The Fund shall prescribe a margin above and below par value for transactions in gold by members, and no member shall buy gold at a price above par value plus the prescribed margin, or sell gold at a price below par value minus the prescribed margin."

The Agreement was accepted by Congress July 31, 1945, by and through the Bretton Woods Agreement Act, 59 Statutes 512.

At the time that the Agreement was made we had no gold dollar in the United States. However, if we had a gold dollar it would contain 15-5/21 grains of gold 9/10ths fine. An ounce of gold would therefore be coined into $35.00. But since we have no gold dollar, we substitute in our thinking paper currency. Under the Bretton Woods Agreement gold has to be bought and sold by the member governments at the rate of $35.00

per ounce, *but the Agreement does not say that gold must be purchased from property owners at that rate.* If the plaintiff-appellant is successful in her appeal to this Court, the decision would have no effect one way or the other upon the Bretton Woods Agreement. Member nations could still stabilize their currencies with gold at the par value of $35.00 per ounce. They could buy and sell gold between themselves at $35.00 per ounce, the Treasury could still offer to buy gold from private citizens at $35.00 per ounce, but the plaintiff would be able to exercise her constitutional right as a citizen in a free country to sell her gold to the jewelry trade, electrical industry and/or the dental profession for the best price available. This is a right that she is entitled to exercise under the Constitution and there is no national or international law in existence today which could be construed to fetter that right.

Possession Cases as Direct Authority

Previously herein we stated that there is no enabling legislation which gives the Treasury Department authority to fix a mandatory $35.00 price on gold in any form. The pertinent part of the Gold Reserve Act involved is found at *31 U.S.C.A., Sec. 442*. It provides that:

> "The Secretary of the Treasury shall, by regulations issued hereunder, with the approval of the President, prescribe the conditions under which gold may be acquired and held, transported, melted or treated, imported, exported, or earmarked: (a) for industrial, professional, and artistic use; (b) by the Federal Reserve banks for the purpose of settling international balances; and (c) for such other pur-

poses as in his judgment are not inconsistent with the purposes of * * *. Gold in any form may be acquired, transported, melted or treated, imported, exported, or earmarked or held in custody for foreign or domestic account (except on behalf of the United States) only to the extent permitted by, and subject to the conditions prescribed in, or pursuant to, such regulations. Such regulations may exempt from the provisions of this section, in whole or in part, gold situated in places beyond the limits of the continental United States."

Note that the language uses the terms "regulations" and "conditions" but not "licenses"; that there is no declaration that gold is against public policy and, further, there is no authority for arbitrary pricing of newly mined gold, or for that matter gold in any form.

The Trading with the Enemy Act of March 9, 1933 (48 Stat. 1) provides in part as follows:

> "During the time of war or during any other period of national emergency declared by the President, the President may, through any agency that he may designate, or otherwise, and under such rules and regulations as he may prescribe, by means of instructions, licenses, or otherwise—
>
> (A) investigate, regulate, or prohibit any transactions in foreign exchange, transfers of credit or payments between, by, through or to any banking institution, and the importing, exporting, hoarding, melting, or earmarking of gold or silver coin or bullion, currency or securities,"

Likewise, there is no authority contained therein giving the Secretary of the Treasury and/or the President power to set a fixed and mandatory price for newly mined gold. Neither is there any declaration therein that gold is against the public policy of the United States.

Executive Order 6260, Section 4, provides:

> "No person other than a federal reserve bank after the date of this order, shall acquire in the United States any gold coin, gold bullion or gold certificates, except under license therefor issued pursuant to this Executive Order * * *"

In the balance of Section 4 the President "authorizes" the Secretary of the Treasury to issue licenses as to gold coin and gold bullion. Section 5 provides that:

> "After 30 days from the date of this order no person shall hold in his possession or retain any interest, legal or equitable, in any gold coin, gold bullion or gold certificates situated in the United States and owned by any person subject to the jurisdiction of the United States, except under license therefor issued pursuant to this order."

The balance of the section "authorizes" the Secretary of the Treasury to issue licenses with respect to gold coin, gold bullion and gold certificates.

We question the legal right of the President to authorize licensing by the Treasury when the authority was not given in the enabling legislation. Further, subsequent approval by Congress of the Presidential Act, to our mind, cannot make something out of nothing. If there was no authority in the first place, then the attempted Executive legislation is ineffective. Therefore, it would seem that in order to achieve valid legislation, Congress would have to re-enact the Executive legislation. Be that as it may, Section 5 of the Executive Order quoted above has on two occasions been held unconstitutional on the very basic ground of plaintiff's suit. The first case is *U. S. v. Driscoll,* District Court, Mass.

(1935), 9 F. Supp. 454, wherein defendant was indicted for failure to comply with Executive order 6260. In the second count of the indictment defendant is charged with owning or in possession of gold coin after 30 days from the date of the order in violation of the provisions of Section 5. This count was held to be uncontitutional and demurrable since the Executive could not by power of requisition take private property for public use without just compensation. The United States Attorney argued that:

> "There is no controversy but that Congress gave the President the right to prohibit the hoarding of gold. If requisition is necessarily incidental to prohibiting, then the right to make requisition comes necessarily within the right to prohibit."

In answer to this argument, the Court made the following statement:

> "If we accept as sound the argument of the United States Attorney, it does not follow that the power of requisition could be exerted by the executive branch in disregard of the inhibitions of the Fifth Amendment against taking property for public uses without just compensation. (*West v. Lyders,* 36 Fed. 2d 108, 110)
>
> To prevent the further requisition of gold or to provide for its exchange as was done in the earlier executive order of April 6, 1933, (revoked by order of August 28th) might be held to be a proper exercise of the power, *but to condemn as criminal all who failed to yield up valuable property rights, lawfully acquired, without providing for just compensation, is not only requisition, but unlawful requisition. Obviously the right to prohibit the hoarding of gold would not extend to confiscation of private property, assuming, as we all may, that*

such property is affected with a public interest. The demurrer to the second count is sustained."

In the second case, *Campbell v. Chase National Bank of New York,* District Court of N. Y. (1933), 5 Fed. Supp. 156, is the following significant language:

> "Turning now to the regulation made under Section 5 of the Executive Order of August 28, 1933, prohibiting every person, after 30 days from the date of the order, from holding in his possession or retaining any interest, legal or equitable, in any gold bullion situated in the United States, *I think it is clear that the persons who drafted that executive order for the President's signature went outside the congressional mandate of Section 2 of Title I of the Act of March 9, 1933,* which gave the President authority to investigate, regulate or prohibit—under such rules and regulations as he might prescribe by means of licenses or otherwise—inter alia the hoarding of gold bullion. It seems to me that authority to regulate or prohibit an act such as hoarding or the continuous use thereof cannot be considered to authorize the requirement of Section 5 of the executive order that the owner of gold must yield up his interest therein and title thereto.
>
> It seems to me quite clear, therefore, that Section 5 of the executive order of August 28, 1933, *is in effect confiscatory and an unconstitutional method of enforcing the powers of Congress . . ."*
>
> Affirmed on other grounds, 71 Fed. 2d 669.

We concur in the analysis of the two courts above and conclude that the Secretary of the Treasury is on infirm ground when he cites Order 6260 as authority for placing a mandatory and fixed price upon newly mined gold, which, during the process of production arrives at a point where it can be called gold bullion.

Heretofore we discussed the background of legislation which gave rise to the $35.00 price and pointed out that its original purpose was to raise farm prices. Thereafter its stated purpose was to expand credit and to protect foreign commerce against depreciated foreign currencies. It would appear that the real immediate reason was to drive all *existing*—(not future)—gold coin, bullion and certificates into the treasury. At no place in any of the legislation and/or its background is there even an intimation that future mined gold was to be fixed at a static, arbitrary and compulsory price to the mine owner. Further, in the Monongahela case, the United States Supreme Court held that fixing the price of private property taken for a public use *is a judicial and not a legislative function*. Therefore, when Congress attempted to specify that tolls could not be considered in setting a price to the owner, the Supreme Court held the legislation unconstitutional. A fortiori the arbitrary and mandatory fixed price set by the Secretary of the Treasury without any enabling legislation by Congress is unconstitutional. This is especially so when the consequences for failure to turn over the private property to Government is imprisonment and/or fine.

When the "gold dollar" was changed from 25.8 to 15-5/21 grains of gold nine-tenths fine, there was no gold dollar in existence because it had been destroyed by the Gold Reserve Act of the previous day. Therefore, when the President made his proclamation, he wasn't regulating the value of money because there was no gold money in existence at that time. Further, the Congres-

sional power to coin money and regulate the value thereof can't be used as authority for the Gold Regulations because Fort Knox gold is not being used by the Government as a monetary reserve. The Treasury is in the business of buying and selling gold at $35.00 an ounce and its stock of merchandise is the gold it holds at Fort Knox. We make reference to the following statement Mr. W. Randolph Burgess, Deputy to the Secretary of the Treasury, made at the hearings before the Subcommittee of the Committee on Banking and Currency, United States Senate, March 29, 1954:

> "We *buy* and *sell* gold freely with other countries through their central banks and treasuries at the price of $35.00 an ounce * * *" (p. 17)

And at page 24:

> "We have *sold* $1½ billion worth of gold to foreign countries in the last 18 months."

If the Treasury is buying and selling gold to the point where its stock of merchandise has been depleted almost one billion dollars in the period of one year, it is not holding the gold as a monetary reserve. This inventory depletion is not being compensated by replacement because gold miners are out of business because of low price. Therefore, it is easy to calculate the time when the Treasury will be out of the gold business because it will have run out of merchandise to "sell". Title to Fort Knox gold is rather vague, but we believe it safe to assume that the American people have some property interest in it. If that be so, the United States, by and through the Treasury Department, is a trustee to the extent of that property interest. If that be so, there is a

breach of trust when our Government sells one and a half billion dollars' worth of gold to foreign countries in 18 months at the bargain basement price of 35 depreciated paper dollars per ounce. A private trustee would not be allowed to deplete the corpus of his trust in that manner.

CONCLUSION

Simple and elementary justice, together with Constitutional mandate, require that the plaintiff's cause of action be recognized under the law in the case at bar. The compulsory requisition of newly mined gold to the Government at its own arbitrary price under threat of severe penalties is a taking of private property without due process of law. Plaintiff's complaint properly stated a cause of action based upon that taking. Judgment herein dismissing her complaint should therefore be reversed.

Respectfully submitted,

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APPENDIX A

U. S. TREASURY DEPARTMENT
OFFICE OF THE SECRETARY

GOLD REGULATIONS

[Reprinted from FEDERAL REGISTER, July 14, 1954]

JULY 14, 1954

UNITED STATES
GOVERNMENT PRINTING OFFICE
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54.36 Gold recovered from natural dep in the United States or any p subject to the jurisdiction the including gold contained in dep of newly mined domestic silve
54.37 Gold contained in deposits of si
54.38 Scrap gold.
54.39 Gold refined from sweeps purch from a United States mint.
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AUTHORITY: §§ 54.1 to 54.70 issued u sec. 5 (b), 40 Stat. 415, as amended, 3, 8, 9, 11, 48 Stat. 340, 341, 342; 12 U. S 95a, 31 U. S. C. 442, 733, 734, 822b, E 6260, Aug. 28, 1933; E. O. 6359, Oct. 25, 1 E. O. 9193, as amended, 7 F. R. 5205; 3 1943 Cum. Supp.; E. O. 10289, 16 F. R. 9 3 CFR 1951 Supp.

SUBPART A—GENERAL PROVISIONS

§ 54.1 *Authority for regulations.* virtue of and pursuant to:

(a) The authority vested in the S retary of the Treasury by the Gold serve Act of 1934, approved January 1934 (48 Stat. 337; 31 U. S. C. 440), the authority with respect to the proval of regulations issued thereun which the President of the United St has delegated to the Secretary of Treasury in paragraph 2 (d) of Exe tive Order No. 10289 of September 1951 (16 F. R. 9501) and

(b) The authority which the Pr dent of the United States has delega to the Secretary of the Treasury by ecutive Orders Nos. 6260 of August 1933 (31 CFR 1938 ed. Part 50), 6 of October 25, 1933 and 9193 of Jul 1942, as amended (7 F. R. 5205, 3 C 1943 Cum. Supp.), which delegati were made by the President of United States by virtue of and p suant to the authority vested in h by section 5 (b) of the act of Octo 6, 1917 (40 Stat. 415), as amended

on 2 of the act of March 9, 1933
Stat. 1), and title III, section 301 of
"First War Powers Act, 1941" (55
839; 12 U. S. C. 95a), and all other
ority vested in him, the following
ations, entitled "Gold Regulations,"
ed in the public interest and neces-
and proper to carry out the pur-
of said acts and Executive orders,
ssued by the Secretary of the Treas-

4.2 *General provisions*—(a) *Scope.*
ons 54.12 to 54.34 refer particularly
ction 3 of the Gold Reserve Act of
as amended, and to Executive Order
260 of August 28, 1933, sections 4,
d 6 of the Executive Order No. 6359
tober 25, 1933, and Executive Order
193 of July 6, 1942, as amended; and
35 to 54.52 refer particularly to sec-
8 and 9 of the Gold Reserve Act of
as amended.

*Delivery requirements of 1933 gold
s.* Executive Order 6102 of April 5,
Executive Order 6260 of August 28,
(31 CFR 1938 ed. Part 50), and the
of the Secretary of the Treasury
cember 28, 1933, as amended and
emented, required that, with cer-
xceptions, all persons subject to the
liction of the United States deliver
e United States gold coins, gold
n and gold certificates situated in
nited States and held or owned by
persons on the dates of such orders.
coins having a recognized special
to collectors of rare and unusual
including all gold coins made prior
pril 5, 1933, have been exempted
such delivery requirement. The
ations in this part do not alter or
in any way the requirements un-
aid orders to deliver gold bullion
old certificates and gold bullion and
certificates required to be delivered
ant to such orders are still required
delivered and may be received in
dance with the Instructions of the
tary of the Treasury of January 17,
(§ 53.1 of this chapter), subject to
ghts reserved in such instructions.

*Effect of authorizations and li-
s.* (1) A general authorization
ined in, or a license issued pursuant
regulations in this part, permitting
acquisition, holding, transporting,
ng or treating, importing, exporting
marking of gold, constitutes within
mits and subject to the terms and
tions thereof a license issued under
pursuant to Executive Order No.
of August 28, 1933, for such acquisi-
holding, transporting, etc.

(2) Any authorization in the regulations in this part, or in any license issued hereunder to acquire, hold, transport, melt or treat, import or export gold in any form shall not be deemed to authorize, unless it specifically so provides, the acquisition, holding, transporting, melting or treating, importing, or exporting of the following:

(i) Any gold coin (except rare gold coin as defined in § 54.20) or any gold melted by any person from gold coin subsequent to April 5, 1933.

(ii) Any gold which has been held at any time in noncompliance with the acts, the orders, or any regulations, rulings, instructions or licenses issued thereunder, including the regulations in this part, or in noncompliance with section 3 of the act of March 9, 1933, or any orders, regulations, rulings, or instructions issued thereunder.

(d) *Revocation or modification.* The provisions of this part may be revoked or modified at any time and any license outstanding at the time of such revocation or modification shall be modified thereby to the extent provided in such revocation or modification.

§ 54.3 *Titles and subtitles.* The titles in this part are inserted for purposes of ready reference and are not to be construed as constituting a part of the regulations in this part.

§ 54.4 *Definitions.* (a) As used in this part, the terms:

(1) "The acts" means the Gold Reserve Act of 1934, as amended, and section 5 (b) of the act of October 6, 1917, as amended by section 2 of the act of March 9, 1933 and Title III, section 301 of the "First War Powers Act, 1941" approved December 18, 1941.

(2) "The orders" means Executive Orders Nos. 6260 of August 28, 1933; 6359 of October 25, 1933; and 9193 of July 6, 1942, as amended.

(3) "United States" means the Government of the United States, or where used to denote a geographical area, means the continental United States and all other places subject to the jurisdiction of the United States.

(4) "Continental United States" means the States of the United States, the District of Columbia, and the Territory of Alaska.

(5) "Person" means any individual, partnership, association, or corporation, including the Board of Governors of the Federal Reserve System, Federal Reserve banks, and Federal Reserve agents.

(6) "Mint" means a United States mint or assay office, and wherever authority is conferred upon a "mint" such authority is conferred upon the person locally in charge of the respective United States mint or assay office acting in accordance with the instructions of the Director of the Mint or the Secretary of the Treasury.

(7) "Gold coin" means any coin containing gold as a major element, including gold coin of a foreign country.

(8) "Gold bullion" means any gold which has been put through a process of smelting or refining, and which is in such state or condition that its value depends primarily upon the gold content and not upon its form; the term "gold bullion" includes, but not by way of limitation, semi-processed gold and scrap gold, but it does not include fabricated gold as defined in this section, metals containing less than 5 troy ounces of fine gold per short ton, or unmelted gold coin.

(9) Fabricated and semi-processed gold:

(i) "Fabricated gold" means processed or manufactured gold in any form (other than gold coin or scrap gold) which:

(*a*) Has a gold content the value of which does not exceed 90 percent of the total domestic value of such processed or manufactured gold; and

(*b*) Has, in good faith, and not for the purpose of evading or enabling others to evade the provisions of the acts, the orders, or the regulations in this part, been processed or manufactured for some one or more specific and customary industrial, professional or artistic uses.

(ii) "Semi-processed gold" means processed or manufactured gold in any form (other than gold coin or scrap gold) which:

(*a*) Has a gold content the value of which exceeds 90 percent of the total domestic value of such processed or manufactured gold; and

(*b*) Has, in good faith, and not for the purpose of evading or enabling others to evade the provisions of the acts, the orders, or the regulations in this part, been processed or manufactured for some one or more specific and customary industrial, professional or artistic uses.

(iii) The value of the gold content of an article shall be computed for the purposes of this subparagraph at $35 per troy ounce of fine gold content.

(iv) For the purpose of this subparagraph, the total domestic value of processed or manufactured gold shall be based on the cost to the owner and not the selling price. The allowable elen of such value are:

(*a*) In the case of a manufactu processor, only the cost of materi the article, labor performed on the cle, and processing losses and ove applicable to the manufacture or essing of such article; and

(*b*) In the case of a dealer or person who holds or disposes of without further processing, only th purchase price paid by such perso cluding transportation costs, if any curred in obtaining delivery of article to his usual place of busine

(10) "Scrap gold" means gold fi clippings, polishings, sweepings an like and any other melted or unm scrap gold, semiprocessed gold or f cated gold, the value of which de primarily upon its gold content an upon its form, which is no longer for the use for which it was proc or manufactured.

(11) "Gold in its natural state" m gold recovered from natural so which has not been melted, smelte refined, or otherwise treated by he or by a chemical or electrical pro

(12) "Hold", when used with r ence to gold includes actual or const tive possession of or the retention of interest, legal or equitable, in such and includes, but not by way of lin tion, acts of agency with respect th although the principal be unknow

(b) Wherever reference is mad this part to equivalents as between lars or currency of the United States gold, $1 or $1 face amount of any rency of the United States equals fif and five twenty-firsts ($15\frac{5}{21}$) gr of gold, nine-tenths fine.

(c) Wherever reference is mad this part to "sections", the referenc unless otherwise indicated, to the de nated sections of this part.

§ 54.5 *General provisions affec applications, statements, and rep* Every application, statement, and re required to be made under this part s be made upon the appropriate form scribed by the Secretary of the Tr ury. Action upon any applicatio statement may be withheld pending furnishing of any or all of the infor tion required in such forms or of s additional information as may be dee necessary by the Secretary of the Tr ury, or the agency authorized or dire to act under this part. There shal attached to the applications, stateme or reports such instruments as may

ired by the terms thereof and such
ıer instruments as may be required
ıe Secretary of the Treasury, or by
agency.

4.6 *General provisions affecting ses and authorizations.* (a) Li-
ɛs issued pursuant to the regulations
ıis part shall be upon the appro-
e form prescribed by the Secretary
e Treasury. Licenses shall be non-
ferable and shall entitle the licensee
quire, hold, transport, melt or treat,
rt, export, or earmark gold only
ch form and to the extent permitted
nd subject to the conditions pre-
ed in, the regulations in this part
such licenses.

Revocation or modification of li-
s: [1] Licenses may be modified or
ed at any time in the discretion
Director of the Mint. In the event
a license is modified or revoked
r than by a modification or revoca-
of the regulations in this part), the
tor of the Mint shall advise the
see by letter, mailed to the last ad-
of the licensee on file in the Bureau
Mint. The licensee, upon receipt
h advice, shall forthwith surrender
ense as directed. If the license has
modified but not revoked, the
tor of the Mint shall thereupon
or cause to be issued a modified
se.

Exclusions: The Director of the
may exclude particular persons or
s thereof from the operation of
ection of the regulations in this part
pt §§ 54.28 to 54.30, inclusive) or
es issued thereunder or from the
eges therein conferred. Such ac-
shall be binding upon all persons
ing actual notice or constructive
thereof. Any violation of the pro-
s of the regulations in this part or
icense issued hereunder, shall con-
e, but not by way of limitation,
ds for such exclusion.

Requests for reconsideration: A
n request for reconsideration of a
l of an application for a license, of
cation, suspension, or modification
existing license, or of an exclusion
the authorizations or privileges
rred in any section of the regula-
in this part setting forth in detail
the reasons for such request, may be addressed to the Director of the Mint, Treasury Department, Washington 25, D. C. In addition, upon written request, the Director will schedule a hearing in the matter at which time there may be brought to the attention of the Bureau of the Mint any information bearing thereon.

(e) No license issued hereunder shall exempt the licensee from the duty of complying with the legal requirements of any State or Territory or local authority.

(f) No license shall be issued to any person doing business under a name which in the opinion of the Secretary of the Treasury or the designated agency issuing the license, is designed or is likely to induce the belief that gold is purchased, treated, or sold on behalf of the United States or for the purpose of carrying out any policy of the United States.

§ 54.7 *General provisions affecting export licenses.*[2] At the time any license to export gold is issued, the Bureau of the Mint, or Federal Reserve bank issuing the same, shall transmit a copy thereof to the collector of customs at the port of export designated in the license. No collector of customs shall permit the export or transportation from the continental United States of gold in any form except upon surrender of a license to export, a copy of which has been received by him from the agency issuing the same (except that licenses on Form TGL–15 (general) covering multiple shipments during a quarterly period are retained by the licensees until the expiration of such period, when they are returned to the Director of the Mint): *Provided, however,* That the export or transportation from the continental United States of fabricated gold may be permitted pursuant to § 54.25 (b) (2) and the export or transportation from the continental United States of gold imported for re-export may be permitted pursuant to §§ 54.32 and 54.33: *And provided further,* That gold held by the Federal Reserve banks under §§ 54.28

ɡulations governing procedures for de-
an application for a license, for revok-
ıspending or modifying a license, and
luding any person from the privileges
red in the regulations in this part are
th in § 92.31 of this chapter.

[2] The regulations in this part shall not be construed as relieving any person from the obligation of compliance with the regulations of the Bureau of Foreign Commerce (formerly the Office of International Trade), (15 CFR Parts 360 to 399), the Bureau of Customs (19 CFR Chapter I), or other laws or regulations relating to the importation or exportation of merchandise, where applicable to imports or exports of gold, or articles containing gold.

to 54.30, inclusive, may be exported for the purposes of such sections without a license. The collector of customs to whom a license to export is surrendered shall cancel such license and return it to the Director of the Mint or to the Mint or the Federal Reserve bank which issued the same. In the event that the shipment is to be made by mail, a copy of the export license shall be sent by the agency issuing the same to the postmaster of the post office designated in the application, who will act under the instructions of the Postmaster General in regard thereto.

§ 54.8 *General provisions affecting import licenses.* No gold in any form imported into the United States shall be permitted to enter until the person importing such gold shall have satisfied the collector of customs at the port of entry that he holds a license authorizing him to import such gold or that such gold may be imported without a license under the provisions of §§ 54.12 to 54.21, inclusive, or §§ 54.28 to 54.30, inclusive. Postmasters receiving packages containing gold will deliver such gold subject to the instructions of the Postmaster General.

§ 54.9 *Forms available.* Any form, the use of which is prescribed in this part, may be obtained at, or on written request to, any United States mint or assay office, or the Director of the Mint, Treasury Department, Washington 25, D. C.

§ 54.10 *Representations by licensees.* Licensees may include in public and private representations or statements the clause "licensed on form TGL____ (here inserting the number of the form of license held by the licensee) pursuant to the regulations issued by the Secretary of the Treasury," but any representation or statement which might induce the belief that the licensee is acting or is especially privileged to act on behalf of or for the United States, or is purchasing, treating, or selling gold for the United States, or in any way dealing in gold for the purpose of carrying out any policy of the United States, shall be a violation of the conditions of the license.

(a) *Business names and representations generally.* No person doing business under a name which is designed or is likely to induce the belief that gold is being purchased, treated, or sold on behalf of the United States, or any agency thereof, or for the purpose of carrying out any policy of the United States making representations or stateme which might induce the belief that s person is acting or is especially pr leged to act on behalf of or for United States, or is purchasing, treat or selling gold for the United States in any way dealing in gold for the p pose of carrying out any policy of United States, may acquire, hold, tra port, melt, or treat, import, export earmark any gold under authority §§ 54.12 to 54.20, inclusive, or §§ 54.2 54.27, inclusive.

§ 54.11 *Civil and criminal penalti* (a) *Civil penalties.* Attention is dire to section 4 of the Gold Reserve Ac 1934, which provides:

> Any gold withheld, acquired, transpo melted or treated, imported, exported, or marked or held in custody, in violatio this Act or of any regulations issued under, or licenses issued pursuant the shall be forfeited to the United States, may be seized and condemned by like ceedings as those provided by law for forfeiture, seizure, and condemnatio property imported into the United S contrary to law; and in addition any pe failing to comply with the provisions of Act or of any such regulations or lice shall be subject to a penalty equal to the value of the gold in respect of w such failure occurred (31 U. S. C. 443).

(b) *Criminal punishment.* Atten is also directed to (1) section 5 (b the act of October 6, 1917, as amen which provides in part:

> Whoever wilfully violates any of the visions of this subdivision or of any lic order, rule or regulation issued thereu shall, upon conviction, be fined not than $10,000 or, if a natural person, m imprisoned for not more than ten yea both; and any officer, director, or age any corporation who knowingly partici in such violation may be punished like fine, imprisonment, or both. As in this subdivision the term "person" n an individual, partnership, associatio corporation (12 U. S. C. 95a (3)).

This section of the act of October 6, as amended, is applicable to viola of any provisions of this part and to lations of the provisions of any lic ruling, regulation, order, direction, o structions issued by or pursuant to direction or authorization of the S tary of the Treasury pursuant to the ulations in this part or otherwise u section 5 (b) of the act of Octob 1917, as amended.

2) Section 1001 of the United States minal Code, which provides:

'hoever, in any matter within the jurisiion of any department or agency of the ted States knowingly and wilfully fals, conceals or covers up by any trick, me, or device a material fact, or makes false, fictitious or fraudulent statets or representations, or makes or uses false writing or document knowing the e to contain any false, fictitious or dulent statement or entry, shall be fined more than $10,000 or imprisoned not e than five years, or both (18 U. S. C.).

PART B—CONDITIONS UNDER WHICH GOLD AY BE ACQUIRED AND HELD, TRANSRTED, MELTED OR TREATED, IMPORTED, PORTED OR EARMARKED

54.12 *Conditions under which gold be acquired, held, melted, etc.* Gold any form may be acquired, held, nsported, melted or treated, imported, orted, or earmarked only to the ex permitted by and subject to the conns prescribed in the regulations in part or licenses issued thereunder.

54.13 *Transportation of gold.* Gold be transported by carriers for per who are licensed to hold and trans such gold or who are permitted by regulations in this part to hold and sport gold without a license.

54.14 *Gold situated outside of the ed States.* Gold in any form situ outside of the United States may acquired, transported, melted or ed, or earmarked or held in custody oreign or domestic account without necessity of holding a license.

4.15 *Gold situated in the posses of the United States.* Gold in any r (other than United States gold) situated in places subject to the rdiction of the United States beyond limits of the continental United s may be acquired, transported, d or treated, imported, exported, or arked or held in custody for the acut of persons other than residents of continental United States, by per not domiciled in the continental d States: *Provided, however,* That may be transported from the contil United States to the possessions e United States only as authorized § 54.25, 54.32, 54.33, or 54.34, or ses issued pursuant thereto.

4.16 *Fabricated gold.* Fabricated s defined in § 54.4 may be acquired, transported within the United s or imported without the necessity of holding a license therefor. Fabricated gold may be exported only as authorized in § 54.25 or in a license issued pursuant to that section.

§ 54.17 *Metals containing gold.* Metals containing not more than 5 troy ounces of fine gold per short ton may be acquired, held, transported within the United States, or imported without the necessity of holding a license therefor. Such metals may be melted or treated, and exported only to the extent permitted by and subject to the conditions prescribed in or pursuant to §§ 54.21 to 54.27, inclusive.

§ 54.18 *Unmelted scrap gold.* Unmelted scrap gold may be acquired, held, transported within the United States, or imported, in amounts not exceeding at any one time 50 fine troy ounces of gold content without the necessity of holding a license therefor. Persons holding licenses issued pursuant to paragraph (a) of § 54.25, or acquiring, transporting, importing or holding gold pursuant to § 54.21, may not acquire, transport, import or hold any gold under authority of this section.

§ 54.19 *Gold in its natural state.* (a) Gold in its natural state, as defined in § 54.4, may be acquired, transported within the United States, imported, or held in custody for domestic account only, without the necessity of holding a license therefor.

(b) Gold amalgam which results from the addition of mercury to gold in its natural state, recovered from natural deposits in the United States or a place subject to the jurisdiction thereof, may be heated to a temperature sufficient to separate the mercury from the gold (but not to the melting temperature of gold) without a license by the person who recovered the gold from such deposits, or his duly authorized agent or employee. The retort sponge so resulting may be held and transported by such person without a license: *Provided, however,* That no such person may hold at any one time an amount of such retort sponge which exceeds in fine gold content 200 troy ounces. Such retort sponge may be acquired from such persons:

(1) By the United States;

(2) By persons holding licenses issued pursuant to paragraph (a) of § 54.25;

(3) By other persons provided that the aggregate amount of such retort sponge acquired and held by such other

persons does not exceed at any one time 200 fine troy ounces of gold content.

(c) Persons acquiring retort sponge under paragraph (b) (3) of this section are authorized to dispose of such retort sponge only to the United States and to persons holding licenses issued pursuant to paragraph (a) of § 54.25.

(d) Except as provided in §§ 54.12 to 54.20, inclusive, and in §§ 54.32 and 54.33, gold in its natural state may be melted or treated or exported only to the extent permitted by, and subject to the conditions prescribed in, or pursuant to, §§ 54.21 to 54.27, inclusive.

§ 54.20 *Rare coin.* (a) Gold coin of recognized special value to collectors of rare and unusual coin may be acquired and held, transported within the United States, or imported without the necessity of holding a license therefor. Such coin may be exported, however, only in accordance with the provisions of § 54.25.

(b) Gold coin made prior to April 5, 1933, is considered to be of recognized special value to collectors of rare and unusual coin.

(c) Gold coin made subsequent to April 5, 1933, is presumed not to be of recognized special value to collectors of rare and unusual coin.

SUBPART C—GOLD FOR INDUSTRIAL, PROFESSIONAL, AND ARTISTIC USE

§ 54.21 *Fifty ounce exemption for processors.* (a) Subject to the conditions in paragraph (b) of this section, any person regularly engaged in an industry, profession, or art, who requires gold for legitimate, customary, and ordinary use therein, may, without the necessity of obtaining a Treasury gold license:

(1) Import unmelted scrap gold or acquire gold in any form from any person authorized to hold and dispose of gold in such form and amount under the regulations in this part or a license issued pursuant hereto;

(2) Hold, transport, melt, and treat such gold;

(3) Furnish unmelted scrap gold to the United States, to persons operating pursuant to §§ 54.18 or 54.21, or to the holder of a license issued pursuant to paragraph (a) of § 54.25; and

(4) Furnish melted scrap gold to the United States or to the holder of a license issued pursuant to paragraph (a) of § 54.25 which authorizes the acquisition of such melted scrap gold.

(b) The privileges of paragraph (a) of this section are granted subject t following conditions:

(1) That the aggregate amoun such gold acquired, held, transpo melted and treated, and imported, not exceed, at any one time, 50 fine ounces of gold content (not inclu gold which may be acquired, held, without a license under any other tion of this part, except § 54.18);

(2) That the aggregate amoun such gold acquired, held, transpo melted and treated, and imported, not exceed, in any calendar month fine troy ounces of gold content including gold which may be acqu held, etc., without a license under other section of this part, ex § 54.18);

(3) That such gold is acquired held only for processing into fabric gold, as defined in § 54.4, by such pe in the industry, profession, or ar which he is engaged; and

(4) That full and exact records kept and furnished in compliance § 54.26.

(c) Persons acquiring, holding, tr porting, melting and treating, and porting gold under authority of section are not authorized:

(1) To consign gold bullion, inclu semi-processed gold, to other person processing except that scrap gold for processing and return in semi-p essed form, be consigned to the ho of a license issued pursuant to paragr (a) of § 54.25, which authorizes the quisition and melting and treatin such gold;

(2) To furnish melted scrap gol persons operating pursuant to the visions of this section or § 54.18;

(3) To dispose of gold held under thority of this section otherwise tha the form of fabricated gold or scrap g

(d) Persons holding licenses iss pursuant to paragraph (a) of § 54.2 acquiring, holding, transporting, or porting, gold pursuant to § 54.18 not acquire, hold, transport, melt treat, or import, any gold under autl ity of this section.

§ 54.22 *Licenses required.* Excep permitted in §§ 54.12 to 54.20, inclus and § 54.21, gold may be acquired held, transported, melted or treated, ported, exported or earmarked for ind trial, professional or artistic use onl the extent permitted by licenses iss under § 54.25.

§ 54.23 *Issuance of licenses or gen authorizations.* The Director of

Mint may issue or cause to be issued licenses or other authorizations permitting the acquisition and holding, transportation, melting and treating, importing and exporting of gold which the Director is satisfied is required for legitimate and customary use in industry, profession, or art, by persons regularly engaged in the business of furnishing or processing gold for industry, profession, or art, or for sale to the United States.

§ 54.24 *Applications.* Every application for a license under paragraph (a) of § 54.25 shall be made on Form TG–12 (except that applications for export licenses shall be made on Form TG–15) and shall be filed in duplicate with the Director of the Mint, Treasury Department, Washington, D. C. Every applicant for a license under paragraph (a) of § 54.25 shall state in his application whether or not any applications have been filed by or licenses issued to any partnership, association, or corporation in which the applicant has a substantial interest or, if the applicant is a partnership, association, or corporation, by or to any person having a substantial interest in such partnership, association or corporation. The Director of the Mint shall not issue any license to any person if in the judgment of the Director more than one license for the same purpose will be used for the principal use or benefit of the same persons or interests. Any person licensed under this subpart acquiring a principal interest in any partnership, association, or corporation, holding a license under this subpart for the purpose shall immediately so inform the Director of the Mint.

§ 54.25 *Licenses*—(a) *Licenses for the acquisition and holding, transportation, melting and treating, importing and disposition of gold.* (1) Upon receipt of the application and after obtaining such additional information as may be deemed advisable, the Director of the Mint, shall, if satisfied that gold is necessary for the legitimate and customary requirements of the applicant's industry, profession, art, or business, and that the applicant is qualified in all respects to conduct gold operations in full compliance with the provisions of this part and the provisions of a Treasury gold license, issue or cause to be issued to the applicant a Treasury gold license on the approved form for the kind of industry, profession, art, or business, in which the applicant is engaged.

(2) Licenses issued under this section may authorize the licensee to acquire and hold not to exceed a maximum amount specified therein; to transport such gold, melt or treat it to the extent necessary to meet the requirements of the industry, profession, art or business for which it was acquired and held or otherwise to carry out the purposes for which it is held under license; and to import gold so long as the aggregate amount of all gold held after such importation does not exceed the maximum amount authorized by the license to be held.

(3) Licenses issued under this paragraph do not permit the exportation or transportation from the continental United States of gold in any form. Such exportation or transportation is permitted only to the extent authorized in paragraph (b) of this section or in a separate license issued pursuant to such paragraph.

(b) *Licenses and authorizations for the exporting of gold*—(1) *Semi-processed gold.* Semi-processed gold as defined in § 54.4 may be exported or transported from the continental United States only pursuant to a separate export license. Such licenses shall be issued by the Director of the Mint upon application made on Form TG–15 establishing to the satisfaction of the Director that the gold to be exported is semi-processed gold and that the export or transport from the continental United States is for a specific and customary industrial, professional, or artistic use and not for the purpose of using or holding or disposing of such semi-processed gold beyond the limits of the continental United States as, or in lieu of money, or for the value of its gold content.

(2) *Fabricated gold.* Fabricated gold as defined in § 54.4 may be exported or transported from the continental United States without the necessity of obtaining a Treasury gold license: *Provided, however,* That the Bureau of the Census Schedule B statistical classification number of each specific commodity to be exported shall be plainly marked on the outside of the package or container, the shipper's export declaration shall contain a statement that such gold is fabricated gold as defined in § 54.4 and is being exported pursuant to the authorization contained in this subparagraph, and such additional documentation shall be furnished as may be required by the Bureau of Customs or any other government agency charged with the enforce-

ment of laws relating to the exportation of merchandise from the United States.

(3) *Rare coin.* (i) Rare gold coin, as defined in § 54.20, made prior to April 5, 1933, may be exported or transported from the continental United States without the necessity of obtaining a Treasury gold license: *Provided, however,* That the shipper's export declaration shall contain a statement that such coin is rare gold coin and is being exported pursuant to the authorization contained in this subparagraph and such additional documentation shall be furnished as may be requested by the Bureau of Customs or any other government agency charged with the enforcement of laws relating to the exportation of merchandise from the United States.

(ii) Gold coin made subsequent to April 5, 1933, may be exported or transported from the continental United States only under license on Form TGL–11 issued by the Director of the Mint. Application for such a license shall be executed on Form TG–11 and filed with the Director of the Mint, Treasury Department, Washington 25, D. C.

(4) *Other exports of gold.* Export licenses may also be issued upon application made on Form TG– 5B in the same manner as prescribed in subparagraph (1) of this paragraph, authorizing the exportation of gold in any form for refining or processing subject to the condition that the refined or processed gold (or the equivalent in refined or processed gold) be returned to the United States, or subject to such other conditions as the Director may prescribe.

§ 54.26 *Investigations; records; subpoenas.* (a) The Director of the Mint is authorized to make or cause to be made such studies and investigations, to conduct such hearings, and to obtain such information as the Director deems necessary or proper to assist in the consideration of any applications for licenses, or in the administration and enforcement of the acts, the orders, and the regulations in this part.

(b) Every person holding a license issued under paragraph (a) of § 54.25, or acquiring, holding or disposing of gold pursuant to the authorizations in §§ 54.18 and 54.21, shall keep full and accurate records of all his operations and transactions with respect to gold, and such records shall be available for examination by a representative of the Treasury Department until the end of the third calendar year (or if such person's accounts are kept on a fiscal y
basis, until the end of the third fis
year) following such operations or tra
actions. The records required to be k
by this section shall include the na
address, and Treasury gold license nu
ber of each person from whom gold
acquired or to whom gold is deliver
and the amount, date, description a
purchase or sales price of each such
quisition and delivery, and any ot
records or papers required to be k
by the terms of a Treasury Departm
gold license. If the person from wh
gold is acquired, or to whom gold is
livered, does not have a Treasury g
license such records shall show, in l
of the license number of such pers
the section of the regulations in this p
pursuant to which such gold was h
or acquired by such person. Such r
ords shall also show all costs and
penses entering into the computation
the total domestic value of articles
fabricated or semi-processed gold as
fined in § 54.4.

(c) The Director of the Mint (or t
officers and employees of the Bureau
the Mint specifically designated by
Director) or any department or age
charged with the enforcement of t
acts, the orders, or the regulations
this part, may require any person
permit the inspection and copying
records and other documents and t
inspection of inventories of gold and
furnish, under oath or affirmation
otherwise, complete information re
tive to any transaction referred to in t
acts, the orders, or the regulations
this part involving gold or articles ma
factured from gold. The records whi
may be required to be furnished shall i
clude any records required to be kept
this section and, to the extent that t
production of such information is nec
sary and appropriate to the enforceme
of the provisions of the acts, the orde
and the regulations in this part, or
censes issued thereunder, any other re
ords, documents, reports, books, a
counts, invoices, sales lists, sales sli
orders, vouchers, contracts, receipts, bi
of lading, correspondence, memoran
papers and drafts, and copies there
either before or after the completion
the transaction to which such recor
refer.

(d) The Director of the Mint may a
minister oaths and affirmations and ma
whenever necessary, require any pers
holding a license under § 54.25 or a
quiring, holding or disposing of gold pu

nt to the authorizations of §§ 54.18 54.21, or any officer, director, or em-yee of such person, to appear and tes- or to appear and produce any of the ords specified in paragraph (c) of this tion or both, at any designated place.

54.27 *Reports.* Every person hold- a license issued pursuant to para-ph (a) of § 54.25 shall make reports the appropriate report form specified such license for the six months' pe-ls ending on the last days of June and ember, respectively, and shall file n reports with the Director of the t, Treasury Department, Washing- 25, D. C. Reports shall be filed hin twenty-five days after the ter-ation of the period for which such orts are made.

PART D—GOLD FOR THE PURPOSE OF TTLING INTERNATIONAL BALANCES AND R OTHER PURPOSES

54.28 *Acquisitions by Federal Re-e banks for purposes of settling in-ational balances, etc.* The Federal erve banks may from time to time uire from the United States by re-ption of gold certificates in accord- with section 6 of the Gold Reserve of 1934 such amounts of gold bullion n the judgment of the Secretary of Treasury, are necessary to settle in-ational balances or to maintain the l purchasing power of every kind urrency of the United States. Such ks may also acquire gold (other than ed States gold coin) abroad or from ate sources within the United States.

54.29 *Dispositions by Federal Re-e banks.* The gold acquired under 28 may be held, transported, im-ed, exported, or earmarked for the oses of settling international bal-s or maintaining the equal purchas-power of every kind of currency of United States: *Provided,* That if the is not used for such purposes within nths from the date of acquisition, it l (unless the Secretary of the Treas- shall have extended the period in which such gold may be so held) aid and delivered to the Treasurer he United States against payment efor by credits in equivalent amounts ollars in the accounts authorized r the sixteenth paragraph of section of the Federal Reserve Act, as nded (48 Stat. 339; 12 U. S. C. 467).

4.30 *Provisions limited to Federal erve banks.* The provisions of this art shall not be construed to permit any person subject to the jurisdiction of the United States, other than a Federal Reserve bank, to acquire gold for the purposes specified in this subpart or to permit any person to acquire gold from a Federal Reserve bank except to the extent that his license issued under this part specifically so provides.

SUBPART E—GOLD FOR OTHER PURPOSES NOT INCONSISTENT WITH THE PURPOSES OF THE GOLD RESERVE ACT OF 1934 AND THE ACT OF OCTOBER 6, 1917, AS AMENDED

§ 54.31 *Licenses required.* Gold may be acquired and held, transported, melted or treated, imported, exported, or earmarked for purposes other than those specified in §§ 54.21 to 54.30, inclusive, not inconsistent with the purposes of the acts only to the extent permitted in §§ 54.12 to 54.20 inclusive, and § 54.32, or under a license issued under §§ 54.33 or 54.34.

§ 54.32 *Gold imported in gold-bearing materials for re-export.* (a) Gold refined (or the equivalent to gold refined) from gold-bearing materials imported into the United States for refining and re-export may be re-exported to the foreign exporter or pursuant to his order, without the necessity of obtaining a Treasury gold export license, subject to the following conditions:

(1) The imported gold-bearing material either (i) was imported into the United States from a foreign resident or a foreign organization, or (ii) was mined by a branch or other office of a United States organization and imported into the United States from such branch or office;

(2) The importer has no right, title, or interest in the gold refined from the imported gold-bearing material other than through its branch or office which is the foreign exporter as provided in subparagraph (1) (i) and (ii) of this paragraph, and the importer will not participate in the sale of such refined gold or receive any commission in connection with the sale of such refined gold;

(3) The refined gold is to be re-exported to the foreign exporter or, pursuant to his order, to a foreign resident or foreign organization; and

(4) Such gold is imported, acquired, and held, transported, melted and treated, as permitted in §§ 54.12 to 54.20, inclusive, or in accordance with a license issued under § 54.25, and in full

compliance with the provisions of paragraph (b) of this section.

(b) *Procedural requirements.* Persons exporting gold pursuant to paragraph (a) of this section shall comply with the following requirements:

(1) *Notation upon entry.* Upon the formal entry into the United States of any gold-bearing materials, the importer shall declare to the collector of customs at the port where the material is formally entered that the importation is made with the intention of exporting the gold refined therefrom to the foreign exporter, or pursuant to his order. The collector shall make on the entry a notation to this effect and forward a copy of the entry to the United States assay office at New York or to the United States mint at San Francisco, whichever is designated by the importer.

(2) *Sampling and assaying.* Promptly upon the receipt of each importation of gold-bearing material at the plant where it is first to be treated, it shall be weighed, sampled, and assayed for the gold content. A reserve commercial sample shall be retained by such plant for at least 1 year from the date of importation, unless the assay is sooner verified by the Bureau of the Mint.

(3) *Plant records.* The importer shall cause an exact record, covering each importation, to be kept at the plant of first treatment. The records shall show the gross wet weight of the importation, the weight of containers, if any, the net wet weight, the percentage and weight of moisture, the net dry weight, and the gold content shown by the settlement assay. A true copy of such record shall be filed promptly with the assay office in New York or the mint at San Francisco, whichever has been designated to receive a copy of the entry. The plant records herein required to be kept shall be available for examination by a representative of the Treasury Department for at least 1 year after the date of the disposition of such gold.

(4) *Limitations on exports.* The gold refined (or the equivalent to gold refined) from imported gold-bearing materials shall be exported not later than seven months from the date of entry of such gold-bearing materials and shall not exceed the amount of gold shown on the refiner's settlement sheet as having been recovered from the imported gold-bearing material: *Provided,* That, such gold may be exported prior to the procurement of the refiner's settlement sheet in an amount not in excess of 90 percent of a written estimate of the g content of the gold-bearing mate based upon the actual test assay of su material.

(5) *Export declaration and certific* The exporter shall state on his exp declaration that the shipment is g refined (or the equivalent to gold fined) from imported gold-bearing m terials which is being exported pursu to the authorization contained in t section, and shall attach to his exp declaration a certificate properly e cuted in duplicate on Form TG–16 a two true copies of the refiner's settlem sheet. In the event that exportatior made prior to procurement of the set ment sheet, duplicate certified copies the report of the actual test assay the gold-bearing material, together w a statement showing that an exportat with respect to such material is nec sary prior to the time the settlem sheet can be procured, shall be subm ted by the exporter with his export dec ration and certificate on Form TG- The collector of customs shall forw a copy of the certificate on Form TG and a copy of the settlement sheet, the report of the test assay, to the Uni States assay office at New York or United States mint at San Francis whichever has been designated to rece a copy of the entry.

§ 54.33 *Gold imported for re-port*[3]—(a) *Exportation promptly wi out license.* Gold may be imported a transported for prompt export, and ported without the necessity of holdi a license, provided the gold is, in fa exported promptly and remains un customs custody throughout the per during which it is within the custo limits of the United States. Upon t arrival in the United States of gold i ported for re-export pursuant to t provisions of this section, the impor shall declare to the collector of custo at the port of entry that it will be exported promptly. The collector customs shall make a notation of t declaration upon the entry and forwa a copy of the entry to the Director of t Mint.

(b) *Exportation pursuant to licen* In the event that the export of any g imported pursuant to this section is d layed due to the unavailability of faci

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[3] Attention is directed to Order No. 29 the Foreign-Trade Zones Board (17 F. 5316; 15 CFR 400.803) which is applica to gold.

for the onward transportation of
ı gold, the Director of the Mint may,
ect to the following provisions, issue
ıses on Form TGL–17 authorizing
importation, holding, transportation,
exportation of gold which the Direc-
is satisfied is, in fact, imported for
xport promptly upon the completion
ecessary arrangements for the trans-
ation of such gold.
) Every application for a license un-
this section shall be made on form
-17 and shall be filed with the Direc-
of the Mint.
) Upon receipt of the application
after making such investigation of
case as may be deemed advisable, the
ctor of the Mint, if satisfied that the
was, in fact, imported for re-export
nptly upon the completion of neces-
arrangements for the transporta-
of such gold, shall issue to the ap-
ınt a license on form TGL–17.

54.34 *Licenses for other purposes.*
Secretary of the Treasury, with the
oval of the President, shall issue
ıses authorizing the acquisition,
sportation, melting or treating, im-
ing, exporting, or earmarking of
, for purposes other than those speci-
in §§ 54.21 to 54.30, inclusive, 54.32
54.33, which, in the judgment of the
etary of the Treasury, are not in-
istent with the purposes of the acts,
ect to the following provisions:
) *Applications.* Every application
a license under this section shall be
e on form TG–18 and shall be filed
luplicate with the Federal Reserve
k for the district in which the appli-
; resides or has his principal place
usiness. Upon receipt of the appli-
on and after making such investiga-
of the case as it may deem advisable,
Federal Reserve bank shall trans-
to the Secretary of the Treasury the
inal of the application, together with
supplemental information it may
n appropriate. The Federal Reserve
k shall retain the duplicate of the
ication for its records.
) *Licenses.* If the issuance of a li-
e is approved, the Federal Reserve
k which received and transmitted the
ication will be advised by the Sec-
ry of the Treasury and directed to
e a license on form TGL–18. If a
ıse is denied, the Federal Reserve
k will be so advised and shall imme-
ely notify the applicant. The deci-
of the Secretary of the Treasury
ı respect to the granting or denying
license shall be final. If a license is
granted, the Federal Reserve bank shall thereupon note upon the duplicate of the application therefor, the date of approval and issuance and the amount of gold specified in such license.

(c) *Reports.* Within 7 business days of the date of disposition of the gold acquired or held under a license issued under this section, or within 7 business days of the date of export, if such exportation is authorized, the licensee shall file a report in duplicate on form TGR-18 with the Federal Reserve bank through which the license was issued. Upon receipt of such report, the Federal Reserve bank shall transmit the original thereof to the Secretary of the Treasury, and retain the duplicate for its records.

SUBPART F—PURCHASE OF GOLD BY MINTS

§ 54.35 *Purchase by mints.* The mints, subject to the conditions specified in the regulations in this part, particularly § 54.36 to § 54.44, and the general regulations governing the mints, are authorized to purchase:

(a) Gold recovered from natural deposits in the United States or any place subject to the jurisdiction thereof, which shall not have entered into monetary or industrial, professional, or artistic use, including gold contained in deposits of newly mined domestic silver;

(b) Gold contained in deposits of silver eligible for deposit at a mint for return in bar form;

(c) Scrap gold as defined in § 54.4;

(d) Gold refined from sweeps purchased from a United States mint;

(e) Gold (other than United States gold coin) imported into the United States after January 30, 1934;

(f) Gold refined (or the equivalent to gold refined) from imported gold-bearing material; and

(g) Such other gold (other than United States gold coin or gold derived therefrom) as may be authorized from time to time by rulings of the Secretary of the Treasury.

Provided, however, That no gold shall be purchased by any mint under the provisions of this subpart which, in the opinion of the mint, has been held at any time in noncompliance with the acts, the orders, or any regulations, rulings, instructions, or licenses issued thereunder, including the regulations in this part, or in noncompliance with section 3 of the act of March 9, 1933, or any orders,

regulations, rulings, or instructions issued thereunder.[4]

§ 54.36 *Gold recovered from natural deposits in the United States or any place subject to the jurisdiction thereof, including gold contained in deposits of newly mined domestic silver.* (a) The mints may purchase gold under § 54.35 (a) only if the deposit of such gold is accompanied by a properly executed statement as follows:

(1) A statement on form TG–19 shall be filed with each delivery of gold by persons who have recovered such gold by mining or panning in the United States or any place subject to the jurisdiction thereof.

(2) A statement on form TG–20 shall be filed with each delivery of gold by persons who have recovered such gold from gold-bearing materials in the regular course of their business of operating a custom mill, smelter, or refinery.

(3) A statement on form TG–21 together with a statement giving the names of the persons from whom gold was purchased, the amount and description of each lot of gold purchased, the location of the mine or placer deposit from which each lot was taken, and the period within which such gold was taken from the mine or placer deposit, shall be filed with each such delivery of gold by persons who have purchased such gold directly from the persons who have mined or panned such gold.

(b) In addition, the depositors shall show that the gold was acquired, held, melted and treated, and transported by them in accordance with a license issued pursuant to § 54.25 or that such acquisition, holding, melting and treating, and transportation is permitted under §§ 54.12 to 54.20, inclusive, without the necessity of holding a license.

§ 54.37 *Gold contained in deposits of silver.* Gold contained in deposits of silver, eligible at a mint for return in bar form, may be purchased by the mints: *Provided,* That the gold was not mixed with such silver for the purposes of selling gold to the United States which was not eligible for purchase by the United States under paragraphs (a), (c), (d), (e), or (f) of § 54.35.

§ 54.38 *Scrap gold.* Deposits of s[crap] gold must be accompanied by a st[ate]ment executed on form TG–22. In a[ddi]tion the depositors of such gold s[hall] establish to the satisfaction of the m[int] that the gold was acquired, held, [and] transported by them in accordance [with] the regulations in this part or a lic[ense] issued pursuant thereto.

§ 54.39 *Gold refined from sweeps [pur]chased from a United States mint.* G[old] refined from sweeps purchased fro[m a] United States mint shall be purch[ased] only if the deposit of such gold is acc[om]panied by a statement executed on f[orm] TG–28.

§ 54.40 *Imported gold.* Except [for] gold which may be purchased in acc[ord]ance with the provisions of § 54.41, [the] mints are authorized to purchase [only] such gold imported into the Un[ited] States as has been in customs cust[ody] throughout the period in which it s[hall] have been situated within the cust[oms] limits of the continental United Sta[tes] and then only subject to the follow[ing] provisions:

(a) *Notation upon entry.* Upon [for]mal entry into the United States of [such] gold intended for sale to a mint un[der] this subpart, the importer shall dec[lare] to the collector of customs at the p[ort] of entry where the gold is formally [en]tered that the gold is entered for s[uch] sale. The collector shall make a no[ta]tion of this declaration upon the en[try] and forward a copy to the mint de[sig]nated by the importer.

(b) *Statement by importer.* Upon [the] deposit of the gold with the mint de[sig]nated by the importer, the importer sh[all] file a statement executed in duplic[ate] on form TG–23.

§ 54.41 *Gold refined from impor[ted] gold-bearing material.* The mints [are] authorized to purchase gold refined [(or] the equivalent to gold refined) fr[om] gold-bearing material which has b[een] either imported into the United Sta[tes] pursuant to a license issued under p[ar]agraph (a) of § 54.25 for sale of the g[old] derived therefrom to a designated mi[nt] or imported into the United States un[der] § 54.32 (notwithstanding the declarat[ion] made by the importer upon the en[try] into the United States of such gold-be[ar]ing material as required by § 54.32 (b) whether or not such gold or gold-bear[ing] material has been in customs cust[ody] throughout the period it has been in [the]

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[4] Gold which has been so held in noncompliance with section 3 of the act of March 9, 1933, or the Order of the Secretary of the Treasury of December 28, 1933, may, however, be purchased in accordance with the Instructions of the Secretary of the Treasury of January 17, 1934 (§ 53.1 of this chapter), subject to the rights reserved in such Instructions and at the price stated therein.

oms limits of the continental United tes, subject to the following provis:

) In the case of gold-bearing mate- imported pursuant to license issued r paragraph (a) of § 54.25, the im- er shall declare to the collector of oms at the port of entry that the l-bearing material is being imported ale of the gold refined therefrom to signated mint; the collector shall e on the entry a notation to this t and forward a copy thereof to the designated by the importer.

() In the case of gold-bearing mate- imported under § 54.32, if the gold ed therefrom is offered to a mint r than the mint at San Francisco e assay office at New York, the im- r shall have caused the copy of the y described in § 54.32 (b) to be rarded to the mint to which he is ing the gold for sale.

Before any gold may be purchased r this section, the requirements of 32 (b) (2) and (3) must be shown ave been complied with: *Provided, ever,* That any person importing bearing materials for sale of the refined therefrom to a mint other the mint at San Francisco or the office at New York shall have d the true copy of the record de- ed in § 54.32 (b) (3) to be forwarded e mint to which he is offering the for sale.

Upon presentation of the gold to nt or assay office for purchase, the rter shall file a statement executed plicate on form TG–26, together two true copies of the settlement covering the gold-bearing material rted.

No gold shall be accepted for pur- under authority of this paragraph s it is delivered to the mint and all e terms hereof complied with within months from the date of the for- ntry into the United States of the bearing material from which it was cted.

§ 4.42 *Deposits.* Deposits of gold ibed in § 54.35 and rulings issued under will be received in amounts of ess than 1 troy ounce of fine gold deposited in the following forms: ets, grains, and dust which are in native state free from earth and , or nearly so, retort sponge, lumps, , bars, kings, buttons, and scrap as defined in § 54..4. All deposits ining 800 thousandths or more of metal shall be rejected. In the case of gold forwarded to a mint by mail or express, a letter of transmittal shall be sent with each package. When there is a material discrepancy between the actual and invoice weights of a deposit, further action in regard to it will be deferred pending communication with the depositor.

§ 54.43 *Rejection of gold by mint.* Deposits of gold which do not conform to the requirements of §§ 54.35 to 54.42, inclusive, or which otherwise are unsuitable for mint treatment shall be rejected and returned to the person delivering the same at his risk and expense. The mints shall not purchase gold under the provisions of this subpart from any person who has failed to comply with the regulations in this part or the terms of a Treasury gold license. Any deposit of gold which has been held in noncompliance with the acts, the orders, or any regulations, rulings, instructions or licenses issued thereunder, including the regulations in this part, or in noncompliance with section 3 of the act of March 9, 1933, or any orders, regulations, rulings, or instructions issued thereunder, may be held subject to the penalties provided in § 54.11 or section 3 of the act of March 9, 1933.

§ 54.44 *Purchase price.* The mints shall pay for all gold purchased by them in accordance with this subpart $35.00 (less one-fourth of 1 percent) per troy ounce of fine gold, but shall retain from such purchase price an amount equal to all mint charges. This price may be changed by the Secretary of the Treasury without notice other than by notice of such change mailed or telegraphed to the mints.

SUBPART G—SALE OF GOLD BY MINTS

§ 54.51 *Authorization to sell gold.* Each mint is authorized to sell gold to persons holding licenses issued pursuant to § 54.25, or to persons authorized under § 54.21 to acquire such gold for use in industry, profession, or art: *Provided, however,* That except in justified cases, no mint may sell gold to any person in an amount which, in the opinion of such mint, exceeds the amount actually required by such person for a period of 3 months. Prior to the sale of any gold under this subpart, the mint shall require the purchaser to execute and file in duplicate a statement on form TG–24, or, if such purchaser is in the business of furnishing gold for use in industries, professions, and arts, on form TG–25.

The mints are authorized to refuse to sell gold in amounts less than 25 ounces, and shall not sell gold under the provisions of this subpart to any person who has failed to comply with the regulations in this part or the terms of his license.

§ 54.52 *Sale price.* The mints shall charge for all gold sold under this article $35.00 (plus one-fourth of 1 percent) per troy ounce of fine gold plus the regular mint charges. This price may be changed by the Secretary of the Treasury without notice other than by notice of such change mailed or telegraphed to the mints.

SUBPART H—TRANSITORY PROVISIONS

§ 54.70 *Legal effect of amendment of regulations.* This amendment of the Gold Regulations shall not affect any a done or any right accruing or accrue or any suit or proceeding had or com menced in any civil or criminal cau prior to the effective date of this amenc ment but all such liabilities shall con tinue and may be enforced as if sa amendment had not been made.

NOTE: The record-keeping and reportir requirements of these regulations have bee approved by the Bureau of the Budget i accordance with the Federal Reports A of 1942.

[SEAL] H. CHAPMAN ROSE,
Acting Secretary of the Treasury.

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